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**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK**

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In re:

RESIDENTIAL CAPITAL, LLC, et al.,

Debtors.

)  
) Case No. 12-12020 (MG)  
)  
) Chapter 11  
)  
) Jointly Administered  
)  
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**DECLARATION OF JONATHAN D. JANOW IN SUPPORT OF ALLY FINANCIAL,  
INC'S OPPOSITION TO THE MOTION OF THE OFFICIAL COMMITTEE OF  
UNSECURED CREDITORS TO PRECLUDE TIMOTHY DEVINE FROM TESTIFYING  
ABOUT ANY OF THE MATTERS AS TO WHICH DISCOVERY FROM HIM HAS  
BEEN BLOCKED BASED ON A CLAIM OF PRIVILEGE**

I, JONATHAN D. JANOW, hereby declare, pursuant to 28 U.S.C. § 1746, that the following is true and correct:

1. I am an associate at the law firm of Kirkland & Ellis LLP, counsel to Ally Financial, Inc. ("AFI") in the chapter 11 cases of the above captioned matter. I respectfully submit this declaration in support of AFI's Opposition To The Motion Of The Official Committee Of Unsecured Creditors To Preclude Timothy Devine From Testifying.

2. Attached to my Declaration as Exhibit A in support of AFI's opposition are excerpts from the deposition testimony of Timothy Devine, dated November 19, 2012.

Dated: May 14, 2013  
Washington, D.C.

/s/ Jonathan D. Janow  
Jonathan D. Janow

# **EXHIBIT A**

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

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In Re: Cae No:

RESIDENTIAL CAPITAL, LLC, et. al, 12-12020(MG)

Debtors.

-----x

VIDEOTAPE DEPOSITION OF TIMOTHY DEVINE

New York, New York

November 19, 2012

10:17 a.m.

Reported by:  
ERICA L. RUGGIERI, RPR  
JOB NO: 27973

1 TIMOTHY DEVINE

2 MR. BRYAN: This is 121?

3 MR. KAUFMAN: I believe so.

4 MR. PRINCI: Thank you.

5 Q. Did you see this letter from  
6 Mr. Solomon on or about its date?

7 A. Yes.

8 Q. Were you the one who drafted it?

9 A. I don't recall.

10 Q. Wasn't this letter part of the  
11 approach that was decided upon at your  
12 meeting with Mr. Solomon when you spoke  
13 with him about how to deal with  
14 Ms. Patrick?

15 MR. BRYAN: Objection to form.

16 MR. PRINCI: Objection as to  
17 form.

18 A. Yeah, I'm not sure what was  
19 decided at that meeting that I had with  
20 Mr. Solomon.

21 Q. Let me show you the document  
22 that has been marked previously as  
23 Exhibit 51, which is an e-mail dated  
24 October 26, 2011, from Mr. Solomon to a  
25 number of people, including yourself.

1 TIMOTHY DEVINE

2 Did you -- and there's an  
3 attachment, a letter dated October 25,  
4 2011, from Ms. Patrick to Mr. Solomon. Do  
5 you have that in front of you?

6 A. Yes.

7 Q. Did you receive Mr. Solomon's  
8 e-mail with the attachment on or about its  
9 date?

10 A. Yes.

11 Q. And did you read Ms. Patrick's  
12 response to Mr. Solomon's October 21st  
13 letter?

14 A. I don't have that response in  
15 front of me.

16 Q. I think it's part of the  
17 exhibit.

18 A. Oh, sorry. Okay. October 25.

19 Q. Yes. You understood that  
20 Ms. Patrick's letter was in response to  
21 Mr. Devine -- Mr. Solomon's October 21st  
22 letter, right?

23 A. I do remember seeing the letter,  
24 yes.

25 Q. And you recognize that it was

1 TIMOTHY DEVINE

2 Ms. Patrick's response to Mr. Solomon's  
3 October 21st letter, correct?

4 A. What I recognize is that I did  
5 see this letter from Kathy Patrick to  
6 Mr. Solomon.

7 Q. You saw Ms. Patrick's statement  
8 in last paragraph of her letter that her  
9 clients did not accept the contention that  
10 AFI didn't bear liability for the PLS and  
11 R&W claims they were threatening, correct?

12 A. I -- I read the letter.

13 Q. You saw that --

14 A. I read --

15 Q. -- part of the letter?

16 A. That's not what it says.

17 Q. In the last paragraph of the  
18 letter Ms. Patrick said "Our clients do  
19 not, however, accept your assertion that  
20 Ally Financial, Inc., does not ultimately  
21 bear the liability associated with the  
22 repurchase and servicing claims described  
23 in my October 17th letter. Ally does."

24 You see that?

25 A. Yes, I saw that.

1 TIMOTHY DEVINE

2 Q. You have seen these documents  
3 before, haven't you?

4 A. As I said, I don't remember in  
5 particular seeing this document.

6 Q. Do you know who prepared the  
7 document?

8 A. No.

9 MR. KAUFMAN: Let's mark as the  
10 next exhibit an e-mail chain that runs  
11 from December 7, 2011 to December 15,  
12 2007. This one has Bates number Ally  
13 PEO 0042503. So I ask that it not be  
14 published on the screen.

15 (9019 Exhibit 124, e-mail chain  
16 that runs from December 7, 2011 to  
17 December 15, 2007, Bates Ally PEO  
18 0042503, marked for identification, as  
19 of this date.)

20 MR. BRYAN: Thank you.

21 Q. Do you have this document in  
22 front of you?

23 A. Yes.

24 Q. And did you send the e-mail at  
25 the top of the chain on December 15, 2011?



1 TIMOTHY DEVINE

2 A. It looks like I did.

3 Q. And did you send that e-mail  
4 after receiving the communication from  
5 Ms. Patrick's firm forwarding draft  
6 confidentiality and tolling agreements?

7 A. It looks like I did. I don't  
8 remember days of the week in December of  
9 2011.

10 Q. The e-mail -- the e-mails  
11 underneath yours reflect that Mr. Sheeren  
12 sent draft confidentiality and tolling  
13 agreements to Ms. Hamzephour, she  
14 forwarded it to you FYI and then you  
15 responded, right?

16 A. Yeah. I don't see any  
17 attachment, unless I'm missing a page, to  
18 Exhibit 124. I just see what appears to  
19 be a cover e-mail.

20 Q. I'm aware. We -- we looked at  
21 that document, those documents before.  
22 This is a continuation of the e-mail chain  
23 that we looked at earlier.

24 In any event, am I correct,  
25 Mr. Devine, that looking at this you

1 TIMOTHY DEVINE

2 received a copy of Mr. Sheeren's e-mail to  
3 Ms. Hamzephour who sent it to you FYI?

4 A. Are you referring back to  
5 Exhibit 122?

6 Q. No. I'm referring to this  
7 exhibit.

8 A. Oh, well, as I said, there's  
9 nothing attached. So if you are asking me  
10 to talk about what is attached, I can only  
11 read --

12 Q. I wasn't. I wasn't.

13 A. Okay, sorry.

14 Q. I didn't ask you anything about  
15 what was attached.

16 MR. BRYAN: Why don't you just  
17 rephrase the question or restate it.

18 Q. In your e-mail, Mr. Devine, you  
19 said "Pursuant to our plan I will reach  
20 out to Kathy Patrick by e-mail letting her  
21 know that Tammy has forwarded me the  
22 correspondence and asked me to follow up.  
23 First step, requesting confirmation of her  
24 representation by clients."

25 You wrote that, correct?

1 TIMOTHY DEVINE

2 A. Yeah, that looks like I wrote  
3 that, yes.

4 Q. And when you said, "First step  
5 requesting confirmation of her  
6 representation by clients," what -- what  
7 is it that you were referring to? You  
8 want to know the scope of her  
9 representation and the identity of her  
10 clients?

11 A. This e-mail looks to me like an  
12 e-mail that I would have written to Tammy  
13 Hamzephour, who was general counsel at  
14 that time for the ResCap entities. And it  
15 appears to include an understanding as to  
16 what my role would be in connection with  
17 what Tammy asked me to do. That's what it  
18 appears to reflect.

19 Q. When you said "pursuant to our  
20 plan," what plan was that?

21 A. The -- the discussion there and  
22 the plan that's referred to would reflect  
23 a plan that the lawyers had advised and  
24 recommended to the client and had  
25 authority from the client to pursue. So

1 TIMOTHY DEVINE

2 MR. BRYAN: All right. Let's  
3 take a break.

4 THE VIDEOGRAPHER: The time is  
5 11:29 a.m. and we are off the record.

6 (Whereupon, there is a recess in  
7 the proceedings.)

8 THE VIDEOGRAPHER: The time is  
9 11:38 a.m. and we are back on the  
10 record.

11 Q. Looking at Exhibit 130. These  
12 e-mails reflect a number of communications  
13 between yourself and Mr. Franklin or his  
14 colleagues; is that correct?

15 A. I don't recognize the name Janet  
16 Laughlin or Laughlin but she appears to be  
17 related to the Talcott Franklin firm.

18 Q. Did you send each of the e-mails  
19 that show you as the author?

20 A. I appear to have, sure.

21 MR. KAUFMAN: Let's mark as the  
22 next exhibit a document bearing Bates  
23 number Ally 0209505 to 9508. The  
24 first page of which shows it has been  
25 redacted.

1 TIMOTHY DEVINE

2 (9019 Exhibit 131, series of  
3 redacted e-mails, Bates Ally 0209505  
4 to 9508, marked for identification, as  
5 of this date.)

6 Q. I'm not sure why the first page  
7 was redacted, Mr. Devine. This is the way  
8 it was produced to us. But if you look at  
9 the second and third pages, that's an  
10 e-mail that you sent, is it not?

11 A. You know what, I'm not trying to  
12 be difficult, I don't see the heading of  
13 that e-mail.

14 Q. I know. It was redacted by your  
15 counsel.

16 A. So it's really hard for me to  
17 say. I can see why you ask, it does have  
18 at the third page my standard signature  
19 block but -- and I'll ask Linda to look  
20 for a time on calendars and so on. But  
21 that looks, the second page looks like an  
22 e-mail I would have sent but I can't see  
23 the signa- -- I can't see the send block.  
24 So I don't know who it went to. It looks  
25 like it came from me but you can -- you

1 TIMOTHY DEVINE

2 can recognize I'd be hard pressed unless I  
3 had that send block.

4 Q. Do you know who you sent your  
5 e-mail to?

6 A. No. That's what I'm struggling  
7 with.

8 Q. In the text of the e-mail on the  
9 second going over to the top of the third  
10 page, you were laying out strategy for  
11 dealing with Tal Franklin, weren't you?

12 MR. BRYAN: Objection to form.

13 A. Yeah, I can see -- are you  
14 referring to the last -- the  
15 second-to-last paragraph on that second  
16 page.

17 Q. The whole thing. You are urging  
18 a meeting. You are saying we can use the  
19 meeting to do the following. You are  
20 saying pre- -- you're talking about  
21 presetting their expectations, pulling  
22 together a conversation to discuss things.  
23 All of that is part of laying out a  
24 strategy for dealing with Mr. Franklin,  
25 wasn't it?

1 TIMOTHY DEVINE

2 A. Yeah. I can't tell. It appears  
3 to be but, again, without that front page  
4 I'm a little bit hamstrung.

5 Q. In the second page -- sorry,  
6 second paragraph of the e-mail which  
7 begins on the second page you said we  
8 ought to have a meeting with them pointing  
9 out that you had pushed them off at the  
10 last minute on February 2nd meeting.

11 Do you see that?

12 A. Yes.

13 Q. Why had you pushed that  
14 February 2 meeting off?

15 A. I don't remember if that's the  
16 one in particular. But I remember that we  
17 did push off one Talcott Franklin meeting  
18 when my mother-in-law was dying.

19 MR. KAUFMAN: Let's mark as the  
20 next exhibit an e-mail chain on  
21 March 6, 2012, all showing a subject  
22 of Tolling Agreement Request.

23 (9019 Exhibit 132, e-mail chain  
24 dated March 6, 2012, subject, Tolling  
25 Agreement Request, marked for

1 TIMOTHY DEVINE

2 Q. And did you receive the e-mails  
3 from Jeff Cancelliere and Patty Zellman  
4 above your e-mail?

5 A. Yes, it looks like I did.

6 MR. KAUFMAN: Let's mark as the  
7 next exhibit another e-mail chain,  
8 this one on March 22nd to March 23,  
9 2012.

10 (9019 Exhibit 133, e-mail chain  
11 dated March 22nd to March 23, 2012,  
12 marked for identification, as of this  
13 date.)

14 MR. PRINCI: What exhibit is  
15 this?

16 THE COURT REPORTER: 133.

17 MR. PRINCI: Pardon?

18 MR. KAUFMAN: 133.

19 MR. PRINCI: Thank you.

20 Q. Looking at the first e-mail in  
21 the chain from David Sheeren to you on  
22 March 22, 2012, at 10:09 a.m., did you  
23 receive that e-mail from Mr. Sheeren?

24 A. It looks like I did, yes.

25 Q. And did you receive -- although



1 TIMOTHY DEVINE

2 it's not attached, did you receive a  
3 template for the RMBS pool data and a  
4 blank sheet for the most frequent --  
5 frequent repurchase reps along with it?

6 A. I -- I don't remember. I assume  
7 I did. I don't remember though.

8 Q. Okay. Did you send Mr. Sheeren  
9 a response on March 23 at 10:33 a.m.?

10 A. Yes.

11 Q. And did you recommend in that  
12 e-mail a call to walk through  
13 Mr. Sheeren's chart with him?

14 A. Yes.

15 Q. And did you also send the e-mail  
16 at the top of the exhibit on March 23,  
17 2012, the one you sent to Ms. Rosten?

18 A. Yes.

19 Q. And in that e-mail you ask  
20 Ms. Rosten to work with Mr. Sheeren to set  
21 up a regular meeting every other week with  
22 him or others at his firm concerning rep  
23 and warranty issues, correct?

24 A. Yes.

25 Q. Was that done?

1 TIMOTHY DEVINE

2 A. Yes, I believe that was done.

3 Q. Okay.

4 A. I think if -- if you go back to  
5 the bottom of that exhibit, 133, I'm not  
6 sure if it was the exact same meeting  
7 or -- or whether it was that meeting  
8 schedule that Linda Rosten was setting up  
9 but I asked to make sure to include John  
10 Ruckdaschel.

11 MR. KAUFMAN: Let's mark as the  
12 next exhibit a March 23, 2012 e-mail  
13 to Mr. Devine from Ginger Cavanaugh,  
14 attached to which is a letter dated  
15 March 22, 2012, from Talcott Franklin  
16 to Mr. Devine.

17 (9019 Exhibit 134, March 23,  
18 2012 e-mail to Mr. Devine from Ginger  
19 Cavanaugh, with attached letter dated  
20 March 22, 2012 from Talcott Franklin  
21 to Mr. Devine, marked for  
22 identification, as of this date.)

23 A. Thank you.

24 Q. Looking at what we just marked,  
25 did you receive this e-mail and attachment

1 TIMOTHY DEVINE

2 on March 23, 2012?

3 A. It looks like it, yeah.

4 Q. Looking at the letter from  
5 Mr. Franklin that's attached, Mr. Franklin  
6 expressed frustration about the progress  
7 of negotiations with him; is that correct?

8 MR. PRINCI: Objection as to  
9 form.

10 Q. That is the substance of his  
11 letter?

12 A. Just a moment. I --

13 Q. Sure. Take your time.

14 A. Okay. I have completed reading  
15 the letter. Thanks.

16 Q. And in substance, Mr. Franklin  
17 expressed -- expressed frustration about  
18 the progress of negotiations with him; is  
19 that right?

20 MR. BRYAN: Object to form.

21 MR. PRINCI: Objection to form.

22 A. I -- I think the letter speaks  
23 for itself. I'd -- I'd be hard pressed to  
24 characterize it in summary fashion.

25 Q. You would?

1 TIMOTHY DEVINE

2 A. Yes.

3 Q. Mr. Franklin complained  
4 specifically in the third paragraph of his  
5 letter that meetings had been delayed and  
6 that Ally had failed to provide responses  
7 to offers of compromise or to move  
8 negotiations forward, right?

9 A. That's what it says.

10 Q. And you understood when you  
11 received his letter that he was  
12 essentially threatening that if things  
13 didn't move forward to his satisfaction,  
14 that would be some consequences?

15 A. If you are asking me how I  
16 responded to him, I can answer that  
17 question. If you are asking me what I  
18 thought and what my mental impressions  
19 were against this potential adversary, I'm  
20 not going to answer it.

21 Q. I'm only -- you -- you are  
22 saying you won't tell me whether you  
23 understood upon receiving the letter that  
24 Mr. Franklin was threatening you if things  
25 didn't move forward to his satisfaction?

1 TIMOTHY DEVINE

2 MR. BRYAN: I think the letter  
3 speaks for itself. If you are asking  
4 him what did -- if you want him to  
5 paraphrase the letter, if that's what  
6 the goal of the question is --

7 Q. I did neither. I want to know  
8 whether you understood when you received  
9 the letter that to be the case?

10 MR. BRYAN: Understood what to  
11 be the case?

12 MR. KAUFMAN: That Mr. Franklin  
13 was threatening that if things didn't  
14 move forward to his satisfaction,  
15 there would be consequences.

16 MR. BRYAN: Objection to the  
17 form.

18 A. I can see reading the letter  
19 here now that he was apparently frustrated  
20 but you'd probably be better to ask him  
21 exactly what he intended to communicate by  
22 the letter.

23 Q. I know what he wrote. I was  
24 only asking what your understanding of  
25 what he was saying was when you got it.

1 TIMOTHY DEVINE

2 Are you telling me you are not going to  
3 answer that question?

4 A. What my mental impressions were  
5 of this potential adversary in litigation?

6 Q. Yes.

7 A. Yes, I'm not going to answer  
8 that.

9 Q. Okay.

10 MR. KAUFMAN: Let's mark as the  
11 next exhibit an e-mail chain between  
12 Mr. Devine and Kathy Patrick on  
13 April 5, 2012.

14 (9019 Exhibit 135, e-mail chain  
15 between Mr. Devine and Kathy Patrick  
16 on April 5, 2011, marked for  
17 identification, as of this date.)

18 Q. Looking at what we have just  
19 marked, is this an exchange of e-mails you  
20 had with Ms. Patrick on April 5, 2012?

21 A. Yes, that's what it looks like.  
22 Yes.

23 MR. KAUFMAN: Let's mark as the  
24 next exhibit an e-mail from Mr. Devine  
25 to Ms. Patrick on April 16, 2012.

1 TIMOTHY DEVINE

2 Attached to which is a draft

3 confidentiality agreement.

4 MR. PRINCI: Is this Exhibit

5 136?

6 THE COURT REPORTER: Yes.

7 (9019 Exhibit 136, e-mail from

8 Mr. Devine to Ms. Patrick dated

9 April 16, 2012, with attached draft

10 confidentiality agreement, marked for

11 identification, as of this date.)

12 A. Thank you.

13 Q. Looking at the document we just

14 marked, did you send this e-mail to

15 Ms. Patrick with the attached draft on

16 April 16, 2012?

17 A. Yes. It looks like that's

18 exactly what I did.

19 Q. Let me show you the document

20 that has been marked previously as

21 Exhibit 76, which is an e-mail chain on

22 April 17, 2012. And let me direct your

23 attention to the e-mail at the top of the

24 first page, the one from you to Gary Lee

25 and Tammy Hamzephour at 9:57 a.m.

1 TIMOTHY DEVINE

2 Do you see that?

3 A. Sorry. Say that again, please.

4 Q. The e-mail at the top of the

5 first page of the exhibit from you to

6 Mr. Lee and Ms. Hamzephour at 9:57 a.m.

7 Do you see that?

8 A. From me -- at the top of the

9 first page?

10 Q. Correct.

11 A. Yes.

12 Q. Did you send that e-mail?

13 A. It looks like I do.

14 Q. And your e-mail reported on a  
15 conversation you had with Mr. Lee the day  
16 before, was that correct?

17 A. Yes.

18 Q. And one of the things you had  
19 talked about with Mr. Lee was whether to  
20 include a dollar figure or dollar figures  
21 for a potential contribution from AFI in a  
22 presentation to Ms. Patrick; is that  
23 correct?

24 A. Yes.

25 Q. And you said that you didn't



1 TIMOTHY DEVINE

2 think a potential dollar range should be  
3 shared with Kathy Patrick at that point;  
4 is that correct?

5 A. Yes.

6 Q. Why not? Why did you think that  
7 a dollar figure should not be shared with  
8 her?

9 A. Are you asking me what I thought  
10 or what I said to Gary and Tammy about  
11 what I thought? Because if you want to  
12 know my answer, I can answer the second  
13 one.

14 Q. Answer the second one.

15 A. Okay. What I said to Gary and  
16 Tammy was that the business hasn't gotten  
17 to an Ally Financial, Inc. number yet.  
18 Meaning AFI and ResCap have not come to an  
19 understanding as to the amount that the  
20 parent AFI and the debtors would agree to  
21 in their separate negotiations.

22 Q. Are you finished?

23 A. Yeah.

24 Q. You also said "Can always share  
25 with her at next round of discussion."

1 TIMOTHY DEVINE

2 What made you think that at the next round  
3 of discussion you'd have such a figure to  
4 share with her?

5 A. I don't remember in particular  
6 but as I understood it, those negotiations  
7 were going on and if they had arrived at a  
8 number and an agreement at a number, then  
9 we would have been able to share it with  
10 Kathy Patrick.

11 Q. Let me show you the document  
12 that's been marked previously as  
13 Exhibit 79, which are e-mails between  
14 yourself and Ms. Hamzephour.

15 Did you send the e-mail at the  
16 bottom of this exhibit to Ms. Hamzephour  
17 on April 23, 2012?

18 A. That's what it looks like, yes.

19 Q. And am I correct that this  
20 e-mail was in preparation for an upcoming  
21 meeting with Kathy Patrick?

22 A. Just one moment. Let me refresh  
23 my memory. Yes, I think that's right in  
24 the timeline.

25 Q. And specifically this was about

1 TIMOTHY DEVINE

2 what information should be presented to  
3 Ms. Patrick in a waterfall presentation;  
4 is that correct?

5 A. It -- it regards certain  
6 information that should be presented in a  
7 waterfall for Kathy Patrick.

8 Q. And -- and among those things  
9 you recommended using 3 billion, 4 billion  
10 and 6 billion as the low, medium, high  
11 valuations of PLS and R&W exposure; is  
12 that correct?

13 MR. BRYAN: Objection.

14 Q. Isn't that what you are  
15 referring to in the first sentence to  
16 Ms. Hamzephour?

17 MR. BRYAN: Objection to the  
18 form.

19 A. No, that's not what I was  
20 referring to.

21 Q. You say "would like to recommend  
22 3, 4, 6 rather than -- rather than 4, 5, 6  
23 as low, medium, high." Weren't you  
24 recommending -- let me ask you this first.  
25 The 3, 4, 6, that -- that referred to

1 TIMOTHY DEVINE

2 billions, correct?

3 A. Yes.

4 Q. And you were recommending using  
5 3 billion, 4 billion and 6 billion as the  
6 low, medium and high valuations to be  
7 included in a waterfall presentation to  
8 Ms. Patrick, correct?

9 MR. BRYAN: Objection to form.

10 A. I don't know what you mean by  
11 valuations in that question.

12 Q. What did the 3, 4, 6 refer to?

13 A. That referred to, as I sit here  
14 today and recollect, three potential  
15 hypothetical scenarios involving what I  
16 understood at the time to be ResCap's  
17 presentation to the Kathy Patrick team  
18 regarding potential allowed claims for the  
19 class of claimants of which the Kathy  
20 Patrick clients represented one part.

21 Q. Okay. And you said to  
22 Ms. Hamzephour that you would provide  
23 analytics to support those values,  
24 correct?

25 A. I said I will provide analytics

1 TIMOTHY DEVINE

2 to demonstrate how one could get to 3 or 4  
3 or 6 billion.

4 Q. Okay. And did you have those  
5 analytics?

6 A. I don't recall whether I had  
7 them as of April 23 or not.

8 Q. Okay. You also recommended  
9 using \$750 million rather than \$1 billion  
10 as a potential AFI contribution; is that  
11 correct?

12 A. Yes, that is correct.

13 Q. And as to that you said, "I  
14 don't have basis to say it should be a  
15 billion and it would be better to leave  
16 some room for negotiation."

17 Do you see that?

18 A. I see that.

19 Q. Okay. Then you went on to say,  
20 "If we want to use a billion we will need  
21 clearance from AFI and I haven't spoken to  
22 Mike." Were you referring to  
23 Mr. Carpenter there?

24 A. Yes.

25 Q. What made you choose 750 million

1 TIMOTHY DEVINE

2 as the potential AFI contribution to show  
3 Ms. Patrick at this point?

4 A. Sitting here today, my best  
5 memory is that I must have heard  
6 discussion in the separate conversation  
7 over an AFI and ResCap settlement that  
8 used the term -- the -- the figure 750.

9 Q. Okay.

10 A. But even as I sit here today, I  
11 recognized that that conversation was  
12 ongoing. And the only reason that a  
13 figure was being used in these ResCap  
14 waterfalls at all was so that ResCap could  
15 at least put a placeholder out in front of  
16 these potential claimants.

17 Q. Okay.

18 A. It wasn't a final figure, in  
19 other words.

20 Q. When you say you must have heard  
21 discussion. Discussion between whom?

22 A. Well, it would have come from  
23 folks who were aware of the status of the  
24 other conversation -- the other  
25 negotiation.

1 TIMOTHY DEVINE

2 Q. Who was that?

3 A. It could have been lawyers. It  
4 could have been business people who  
5 were -- who had heard that figure.

6 Q. Who reported it to you?

7 A. I don't remember.

8 Q. Did you have clearance to  
9 include a 750 dollar -- 50 million dollar  
10 number in a waterfall presentation to  
11 Ms. Patrick at this point?

12 MR. PRINCI: Objection as to  
13 form.

14 A. Well, first of all, it wasn't --  
15 it wasn't an Ally waterfall. And I was  
16 simply recommending -- I had been  
17 presented a draft waterfall to which I was  
18 responding in this e-mail to Tammy  
19 Hamzephour. And reading backward in time  
20 it appears that the draft I saw had a  
21 \$1 billion figure as a potential AFI  
22 contribution. And my recommendation to  
23 Tammy was that she not include 1 billion,  
24 as I felt it would have been misleading  
25 given the status of the separate

1 TIMOTHY DEVINE

2 negotiation as I understood it to -- to  
3 stand that day.

4 Q. By saying that using  
5 \$750 million would leave some room for  
6 negotiation, you had reason to believe,  
7 didn't you, that AFI's contribution could  
8 go higher?

9 MR. BRYAN: Objection to form.

10 A. If I remember correctly, the  
11 draft that I saw started with what I think  
12 they were calling at that time a base  
13 case, which was a \$0 contribution of AFI  
14 to the estates. And then I think that  
15 they went to 250, 500 and 750. So I had  
16 reason to believe that it could be as low  
17 as 0 and as I indicate here, up to 750.

18 Q. No, Mr. Devine, you said that  
19 using 750 million would leave some room  
20 for negotiation. Are you telling me you  
21 had no reason to believe that AFI's  
22 contribution could go higher than that?

23 MR. BRYAN: Objection to form.

24 MR. PRINCI: Objection as to  
25 form.



1 TIMOTHY DEVINE

2 A. All I can say is that I had no  
3 reason to believe that using a billion  
4 would be an appropriate number for ResCap  
5 to use at that time.

6 Q. Okay. Well, you were  
7 recommending that 750 million be put on  
8 the table for a waterfall presen- --  
9 withdrawn -- that 750 million be used in a  
10 waterfall presentation as the high end  
11 contribution from AFI at that point,  
12 right?

13 A. Right. Rather than a billion.

14 Q. Okay. And --

15 A. Because there was no basis for a  
16 billion at that time.

17 Q. Mr. Devine, you are an  
18 experienced negotiator, aren't you?

19 MR. PRINCI: Objection to form.

20 A. I -- I have negotiated  
21 settlements before.

22 Q. You wouldn't have put your  
23 absolute top dollar on the table to start  
24 a negotiation with Ms. Patrick, would you  
25 have?

1 TIMOTHY DEVINE

2 MR. BRYAN: Objection to form.

3 A. If you are asking me what I  
4 would or would have done (sic) on behalf  
5 of the client at that time, that would  
6 require me to speculate. If you are re-  
7 -- if you are asking me why I said to  
8 Tammy Hamzephour it would be better to  
9 leave some room for negotiation, I can  
10 answer. And the answer would be I was  
11 mistaken. I mistakenly assumed that -- I  
12 was mis -- I was badly informed and I  
13 overspoke with regard to the status of the  
14 communications at that point.

15 I regret having put that in  
16 there because I really had no knowledge  
17 and it was foolish of me to put that  
18 statement in there.

19 Q. Were you chastised by anyone for  
20 doing that?

21 A. No. I just feel bad about it  
22 because it -- it was inaccurate. It was  
23 an inaccurate statement of the status of  
24 the communication.

25 Q. And you don't remember from what

1 TIMOTHY DEVINE

2 source you received that communication?

3 A. No.

4 Q. Okay. Whatever contribution AFI  
5 was going to make towards this proposed  
6 settlement with Ms. Patrick, it was going  
7 to require releases from both the PLS, R&W  
8 claimants and ResCap, correct?

9 MR. BRYAN: Objection to form.

10 A. Sorry, that -- sorry. I want to  
11 make sure I understood your question.  
12 Will you please repeat it.

13 Q. Whatever contribution AFI was  
14 going to make towards this proposed  
15 settlement with Ms. Patrick, it was going  
16 to require releases from both the PLS, R&W  
17 claimants and ResCap; is that correct?

18 MR. PRINCI: Objection as to  
19 form.

20 MR. BRYAN: Same objection.

21 A. So it sounds now I better  
22 understand your question like you are  
23 asking me to speculate as to what possible  
24 outcomes could have occurred at that point  
25 in the negotiation.

1 TIMOTHY DEVINE

2 Q. I'm not asking you to speculate.  
3 I'm asking you to tell me at the time that  
4 you were preparing to provide this  
5 waterfall presentation to Ms. Patrick in  
6 connection with proposed settlement with  
7 her, wasn't it your understanding that AFI  
8 in return for whatever contribution it  
9 would be making to that settlement was  
10 going to require releases from both the  
11 PLS claimants as well as ResCap?

12 A. Couple -- couple points in  
13 response. One, I wasn't preparing the  
14 waterfall.

15 Two, we were not negotiating,  
16 Kathy Patrick and me -- Kathy Patrick and  
17 I with regard to whether or not the 750  
18 would be consideration for anything that  
19 the debtor received in connection with the  
20 resolution of a debtor and Kathy Patrick  
21 settlement agreement.

22 Q. Weren't those things all being  
23 negotiated together, Mr. Devine?

24 A. The 750 was not being negotiated  
25 with Kathy Patrick.

1 TIMOTHY DEVINE

2 Q. I understand that. But in order  
3 to make a settlement with her there had to  
4 be some contribution from AFI, right?

5 MR. PRINCI: Object to form.

6 A. You'd have to ask Kathy Patrick  
7 what she was looking for in that regard.

8 Q. What was the point of including  
9 a \$750 million number as a contribution  
10 from AFI in a waterfall presentation to  
11 Ms. Patrick if it wasn't understood that  
12 in order to make any settlement there was  
13 going to have to be a contribution from  
14 AFI?

15 MR. BRYAN: Objection to form.

16 MR. PRINCI: Objection as to  
17 form.

18 A. Now I understand your question.  
19 So as I understand it at the time the  
20 waterfalls, and I'm trying to remember  
21 this, I don't -- there's no attachment to  
22 the exhibit, but I think that the  
23 waterfalls included 0 contribution from  
24 Ally up to 750 million contribution from  
25 Ally. And if you are asking me what was

1 TIMOTHY DEVINE

2 ResCap trying to get done at that time, I  
3 understood from Tammy Hamzephour and Gary  
4 Lee that ResCap was trying to give Kathy  
5 Patrick a hypothetical fully sort of  
6 caveated vision of some possible scenarios  
7 in the event that they struck a deal, that  
8 is, ResCap and Kathy Patrick, in  
9 connection with a ResCap filing and an  
10 allowed claim and so on. And without --  
11 without -- Kathy Patrick at that time had  
12 been duly informed that there was a  
13 potential for an Ally and ResCap  
14 settlement which would have or could have  
15 included some contribution by Ally into  
16 the estate. And so she was trying to  
17 understand what potential such a  
18 contribution, either from 0 up to 750,  
19 would mean for her clients as she  
20 evaluated for her part the -- the  
21 settlement that was being negotiated  
22 between ResCap and Kathy Patrick.

23 Q. And you understood, didn't you,  
24 that if AFI were to make a contribution  
25 towards that settlement it was going to

1 TIMOTHY DEVINE

2 require releases both from the R&W  
3 claimants as well as from ResCap?

4 MR. BRYAN: Object to form.

5 A. So if -- if I understand your  
6 question, what I communicated to Kathy  
7 Patrick was that in connection with the  
8 settlement agreement she was trying to  
9 reach with the debtor, for which she  
10 sought Ally's support and assurance that  
11 Ally wouldn't object to it, Ally would  
12 seek a release -- Ally would seek the  
13 support of her clients of the plan that  
14 was being negotiated between ResCap and  
15 Ally at the time.

16 Q. And that plan would include  
17 releases both from third-party claimants  
18 such as her clients and ResCap, right?

19 A. The plan being negotiated  
20 between ResCap and Ally?

21 Q. Yes.

22 A. The plan being negotiated  
23 between ResCap and Ally would include a  
24 debtor release as well as a provision for  
25 third-party nonconsensual releases, that's

1 TIMOTHY DEVINE

2 correct.

3 Q. Okay.

4 MR. KAUFMAN: Let's mark as the  
5 next exhibit an e-mail on April 24,  
6 2012, from Mr. Devine.

7 (9019 Exhibit 137, WITHDRAWN,  
8 marked for identification, as of this  
9 date.)

10 Q. Looking at the document we've  
11 just marked, Mr. Devine, did you send this  
12 e-mail on April 24th?

13 MR. BRYAN: Again, Phil, can you  
14 represent that this was not on our  
15 clawback list?

16 MR. KAUFMAN: I don't have your  
17 list in front of me, Patrick.

18 MR. BRYAN: I believe this one  
19 plainly is.

20 MR. KAUFMAN: I don't -- you  
21 believe this is on your clawback list?

22 MR. BRYAN: I do.

23 MR. KAUFMAN: Do you have a copy  
24 of your list?

25 MR. BRYAN: We can take a break



1 TIMOTHY DEVINE

2 Q. Focusing on the e-mail that  
3 starts on the bottom of the first page and  
4 continues over to the second. That's an  
5 e-mail you sent to Mr. Solomon and others  
6 on April 27th, correct?

7 A. Just a moment, please.

8 Okay. Sorry, I'm ready to  
9 answer your question.

10 Q. Is that an e-mail you sent to  
11 Mr. Solomon and others on April 27th?

12 A. Yes.

13 Q. And you reported in your e-mail  
14 a conversation you had just had with  
15 Ms. Patrick, correct?

16 A. Yes.

17 Q. And was that an accurate summary  
18 of your conversation with Ms. Patrick?

19 A. I assume it was.

20 Q. The next e-mail up is from  
21 Mr. Solomon at 8:48 p.m. Did you receive  
22 that e-mail?

23 A. Yes, it looks like I did.

24 Q. And then you responded to  
25 Mr. Solomon at 8:50 p.m., correct?

1 TIMOTHY DEVINE

2 A. Yes.

3 Q. And the last line of your  
4 response you said "Lots to do and have to  
5 manage all client expectations since KP's  
6 clients will take several hacks at us."

7 To what clients were you  
8 referring?

9 A. I assume I was referring to the  
10 clients that KP had identified.

11 Q. Okay. When you said "have to  
12 manage all client expectations," which  
13 client or clients were you talking about  
14 there?

15 A. I was probably referring to the  
16 ResCap client as well as the Ally client.

17 Q. And how did you believe those  
18 expectations had to be managed?

19 MR. BRYAN: Objection to form.

20 MR. KAUFMAN: Let me withdraw  
21 it.

22 Q. What expectations of those  
23 clients did you believe had to be managed?

24 A. I'm trying to put myself back in  
25 time. It wasn't clear to me that Kathy

1 TIMOTHY DEVINE

2 Patrick and her clients were going to --  
3 it wasn't clear to me at that time that a  
4 deal was going to get done. And I assume  
5 that's what I meant by having to manage  
6 client expectations with regard to whether  
7 a deal was going to get done or not.

8 Q. Okay. And how did you believe  
9 those expectations concerning whether a  
10 deal could get done needed to be managed?

11 MR. BRYAN: Objection to form.

12 A. I'm going to try and understand  
13 your question better but would you please  
14 clarify.

15 Q. You said "have to manage all  
16 client expectations." And you explained  
17 that those expectations had to do with  
18 whether or not a deal with Ms. Patrick's  
19 clients could get done, right?

20 A. That's my best memory of what I  
21 was talking about. I confess I don't  
22 remember exactly what I was talking about.

23 Q. How did you propose to manage  
24 those expectations?

25 A. How in terms of who I'd speak

1 TIMOTHY DEVINE

2 with or how in terms of what actions would  
3 be taken?

4 Q. Both.

5 A. I don't remember.

6 Q. Who was going to do the  
7 managing, you?

8 MR. BRYAN: Object to form.

9 A. I -- I think the client  
10 expectations, you can see who is on the  
11 e-mail here. You've got Gary Lee and  
12 you've got Tammy Hamzephour. So I assume  
13 that they would be managing whatever  
14 expectations the ResCap client had. And  
15 we have got Bill Solomon, Rick Cieri and  
16 Ray Schrock who together would be managing  
17 client expectations at Ally.

18 Q. What client were you on?

19 MR. BRYAN: Objection to form.

20 Q. Were you the lawyer for the  
21 situation or were you on the Ally side?

22 MR. PRINCI: Objection as to  
23 form.

24 MR. BRYAN: Objection to form.

25 A. With regard to the April 27 --

1 TIMOTHY DEVINE

2 with regard to finalizing the deal with  
3 Kathy Patrick in the role of reporting  
4 back here in the e-mail Friday, April 27  
5 it looks like 8:00 at night, I was  
6 reporting back to Ally and ResCap teams  
7 with regard to the conversation with Kathy  
8 Patrick. It could be that Gary Lee was  
9 having conversations at the same time, I  
10 don't know. But what I reported was that  
11 I had spoken with her and it looked like  
12 essentially a pretty positive and upbeat  
13 status report at that time.

14 Q. Okay.

15 A. So --

16 Q. I was referring to your  
17 statement that, "have to manage all client  
18 expectations." I'm trying to figure out  
19 which client or clients were you managing?

20 A. I wasn't managing --

21 MR. BRYAN: Asked and answered.

22 A. -- any client.

23 Q. So everyone else that you  
24 e-mail -- sent your e-mail to was doing  
25 some managing but you weren't doing any,

1 TIMOTHY DEVINE

2 is that what you're saying?

3 MR. BRYAN: Objection to form.

4 MR. PRINCI: Objection as to  
5 form.

6 A. I'm saying I wasn't managing any  
7 client. If you're talking about managing  
8 expectations --

9 Q. I'm talking managing  
10 expectations.

11 A. Oh, that's different.

12 Q. Whose cli- -- which client  
13 expectations were you managing?

14 A. I was --

15 MR. BRYAN: Objection to form.

16 A. I was providing information to  
17 Tammy and Gary for their advice to the  
18 ResCap clients and I was providing  
19 information to Rick and Ray and Bill with  
20 regard to the Ally client. But clearly by  
21 that point I would have been participating  
22 in attorney-client discussions with the  
23 Ally client with regard to the Kathy  
24 Patrick discussions.

25 MR. KAUFMAN: Let's mark as the

1 TIMOTHY DEVINE

2 investor/securities litigation." And  
3 there's a \$400 million number next to  
4 that. Wasn't that some estimate of the  
5 possible or reasonably possible range of  
6 loss for securities litigation?

7 MR. BRYAN: Object to form.

8 A. Yeah. Well, there's a lot of  
9 detail behind that line. And as I sit  
10 here today, I just can't remember the  
11 detail. But as I recall, that would have  
12 been a number subject to a variety of  
13 stresses that were imposed on the process  
14 from outside of this sort of legal  
15 advisory function.

16 Q. Right. Okay.

17 A. That's the more complete answer.

18 Q. Let me show you what's been  
19 marked previously as Exhibit 83.

20 A. Thank you.

21 Q. Which is an e-mail chain on May  
22 4, 2012. There are two e-mails in this  
23 exhibit. Did you receive the one from  
24 Mr. Lee on May 4?

25 A. Yeah, it looks like I did. Yes.

1 TIMOTHY DEVINE

2 Q. And is the e-mail above that  
3 your response to Mr. Lee?

4 A. Yes. That's what it looks like.

5 Q. Mr. Lee referred to a call or  
6 meeting with Ms. Patrick that day. And  
7 you said our notes match. Were you and  
8 Mr. Lee both on a call with Mr. Patrick --  
9 sorry -- with Ms. Patrick on May 4th?

10 A. I -- I don't remember. What --  
11 what I do remember is that Gary Lee was  
12 having a variety of conversations with  
13 Kathy Patrick during that period, some of  
14 which I would have been included on and  
15 some of which I wouldn't have been  
16 included on.

17 Q. Well, he was summarizing in an  
18 e-mail what Ms. Patrick had proposed that  
19 day. And you said, "Our notes match." So  
20 you must have been on that call, right?

21 MR. PRINCI: Objection as to  
22 form.

23 A. Yeah, might. The reason I  
24 clarified my answer is that it could be  
25 that he was summarizing calls or meetings



1 TIMOTHY DEVINE

2 that took place outside of my presence.

3 Q. You said our notes match --

4 A. So --

5 Q. Didn't that indicate your  
6 agreement with the summary he provided to  
7 you?

8 MR. BRYAN: Object to form.

9 A. Yeah. So as I recall during  
10 those days, as I said, there were times  
11 when I was talking with Kathy Patrick and  
12 there were times when Gary Lee was talking  
13 to Kathy Patrick. So it's just as  
14 reasonable in the misty fog of my memory  
15 right now to understand our notes match to  
16 describe a separate conversation that I  
17 had with Kathy Patrick with the agreement  
18 as Gary Lee describes it here.

19 It's possible that we were in  
20 the same meeting and that that's what that  
21 e-mail means. It's also possible that we  
22 were in separate meetings and we were  
23 comparing notes as to our understanding of  
24 what KP was proposing.

25 Q. Okay. In any event, your

1 TIMOTHY DEVINE

2 understanding of the conversations with  
3 Ms. Patrick matched the summary that  
4 Mr. Lee provided in the e-mail to you; is  
5 that correct?

6 A. That's correct.

7 Q. Okay. The five points listed by  
8 Mr. Lee were the essential terms of the  
9 deal you were discussing with Ms. Patrick  
10 at that time; is that correct?

11 A. No.

12 Q. No. No?

13 A. No.

14 Q. Oh, okay. In point 4 of his  
15 e-mail, Mr. Lee wrote, "The KP group will  
16 enter into a plan support agreement which  
17 would support the DIP, sale, sale process,  
18 servicing, shared services and plan  
19 releases provide that Ally contributes no  
20 less than X dollars in cash."

21 Do you see that?

22 A. I see that, yes.

23 Q. And the plan releases that you  
24 understood Mr. Lee was referring to there  
25 were third-party releases to AFI and a

1 TIMOTHY DEVINE

2 release from ResCap to AFI; is that  
3 correct?

4 A. Are you referring to number 4  
5 only --

6 Q. That is what I'm referring to.

7 A. -- in isolation? Out of  
8 context, number 4?

9 Q. When you received Mr. Lee's  
10 e-mail --

11 A. Yeah.

12 Q. -- and responded to him that  
13 your notes matched his, I'm asking you  
14 whether you understood he was referring  
15 there in number 4 to the plan releases  
16 that would be received by Ally from both  
17 ResCap and third-party claimants?

18 A. I would say, as I sit here  
19 today, plan releases would refer to, at a  
20 minimum, the plan. The debtor release and  
21 the third-party nonconsensual release.

22 Q. Okay. Now, the minimum  
23 contribution from AFI in return for those  
24 releases is set -- is set forth in  
25 Mr. Lee's e-mail as X dollars in cash. Do

1 TIMOTHY DEVINE

2 you see that?

3 A. I see that.

4 Q. He just has an X.

5 A. Yes. I see that that number 4  
6 refers to X dollars in cash.

7 Q. As of May 4 was the amount of  
8 AFI's contribution still open with respect  
9 to Ms. Patrick?

10 A. I don't -- I don't remember.

11 Q. As of May 4 how much was  
12 Ms. Patrick demanding from AFI to enter  
13 into a plan support agreement as part of  
14 her settlement?

15 MR. PRINCI: Objection as to  
16 form.

17 MR. BRYAN: Objection to form.

18 A. Kathy Patrick wasn't demanding a  
19 certain amount of money from AFI into the  
20 estate.

21 Q. Had she indicated to you that  
22 the amount of AFI's contribution was  
23 unimportant to her?

24 A. Had she indicated that it was  
25 unimportant what AFI put in the estate?

1 TIMOTHY DEVINE

2 Q. Yes.

3 A. No, she did not indicate that to  
4 me.

5 Q. Did she indicate that it was  
6 important?

7 A. Yes.

8 Q. Okay. What did she say about  
9 that?

10 A. Kathy Patrick understood that  
11 the negotiation of a dollar number between  
12 AFI and ResCap was going on separately  
13 from the discussions over the RMBS  
14 settlement. Notwithstanding that, she  
15 understood that she had no direct role  
16 or -- or standing to bargain for a number  
17 there since the number -- since that  
18 agreement was between the estate and Ally.  
19 She did care about the number and she told  
20 me that she cared about the number for the  
21 obvious reason that she wanted to maximize  
22 that figure from Ally Financial.

23 Q. But as of May 4th, had she  
24 expressed an amount that she expected from  
25 AFI if she were going to proceed with a

1 TIMOTHY DEVINE

2 settlement?

3 A. I don't remember as of May 4th.

4 Q. Okay.

5 A. The days -- it's going to be  
6 very difficult for me to remember the  
7 particular days. Those conversations were  
8 very concentrated during that time.

9 Q. Well, the amount of AFI's  
10 contribution towards this settlement was  
11 important to AFI, wasn't it?

12 A. Toward the -- toward the ResCap  
13 settlement?

14 Q. In this settlement.

15 A. Well, we weren't -- we weren't  
16 contributing to this settlement.

17 Q. Yeah, okay. I guess technically  
18 that may have been true, Mr. Devine, but  
19 you certainly understood as both  
20 negotiations were proceeding that the  
21 money, whatever it might be, that AFI was  
22 going to settle with ResCap for was going  
23 to wind up in a settlement with  
24 Ms. Patrick, right?

25 MR. PRINCI: Objection as to

1 TIMOTHY DEVINE

2 form.

3 MR. BRYAN: Same objection.

4 A. What -- I certainly understood  
5 that Kathy Patrick was negotiating with  
6 ResCap for an allowed claim which would  
7 govern or -- govern in part or would  
8 potentially go toward resolution of the  
9 eventual disbursement to her clients and  
10 the class that are clients were in in the  
11 estate. And that obviously the quantum of  
12 the recovery of the estate, from whatever  
13 source, was very interesting to her and  
14 her clients.

15 Q. And the amount that AFI would be  
16 paying for the releases from ResCap and  
17 third parties was important to AFI, was it  
18 not?

19 A. Yes.

20 MR. BRYAN: Object to the form.

21 Q. Okay.

22 MR. KAUFMAN: Why don't we take  
23 a lunch break now. It's 1:30.

24 MR. BRYAN: What time do you  
25 want to reconvene?

1 TIMOTHY DEVINE  
2 (9019 Exhibit 142, e-mail chain  
3 dated May 6, 2012, marked for  
4 identification, as of this date.)

5 Q. Looking at what we've just  
6 marked, the first e-mail in the chain,  
7 which starts at the very bottom of the  
8 first page and goes over to the second  
9 page, is from you to Mr. Renzi and Jeff  
10 Cancelliere, correct?

11 A. Yes.

12 Q. And you sent that e-mail?

13 A. Cc'ing Gary Lee at MoFo, yes.

14 Q. And you wanted to see how  
15 waterfalls would look with certain  
16 assumptions built into them; is that  
17 correct?

18 A. I was providing them figures it  
19 looks from here -- I don't have present  
20 recollection of what I was doing but it  
21 looks from this distance that I was  
22 providing them figures to fill in on a  
23 waterfall that was apparently in process.  
24 I don't know as I look here, because it's  
25 only a two-page exhibit, whether or not I



1 TIMOTHY DEVINE

2 originated this subject help with  
3 waterfall before 8:00 p.m. if possible or  
4 if this is part of a longer e-mail  
5 communication string.

6 Q. Whether or not it's part of a  
7 longer e-mail communication string,  
8 Mr. Devine, in your e-mail to  
9 Mr. Cancelliere and Mr. Renzi you asked  
10 them to assume certain figures and plug  
11 them in to two possible waterfall  
12 scenarios, correct?

13 A. Yes, that's correct.

14 Q. And in each case you wanted it  
15 assumed that Ally's contribution to a  
16 settlement would be 750 cash, plus 200 for  
17 HFS, plus 100 for originations, right?

18 A. Yes.

19 Q. What did 200 for HFS signify?

20 A. I don't know exactly what it  
21 signified. And the reason I said that is  
22 I didn't really understand it at the time.  
23 As I sit here today, I believe it  
24 represented Ally's commitment to -- to  
25 assert some position with regard to the

1 TIMOTHY DEVINE

2 stalking horse for the -- for a certain  
3 class of assets that were being offered  
4 for sale in the estate. But -- but I  
5 confess, I didn't know what it was then  
6 and frankly I don't know what it is now.

7 Q. What did you mean by 100 for  
8 originations?

9 A. Similar answer. I understood  
10 that the teams working on the Ally and  
11 ResCap settlement had come up with this  
12 sort of shorthand to represent what I was  
13 made to understand was the Ally cash  
14 contribution to the Ally and ResCap  
15 settlement, which is the settlement to  
16 which this sentence here refers. "Assume  
17 750 Ally cash plus 200 for HFS plus 100  
18 for originations constitute the Ally" cash  
19 contribution to the settlement. That's  
20 the Ally ResCap settlement that's being  
21 described. And as I said before, I really  
22 did not participate in or have any  
23 responsibility in working on that, those  
24 settlement discussions.

25 Q. Who was it that gave you those

1 TIMOTHY DEVINE

2 amounts?

3 A. I don't know. I -- I don't know  
4 who gave me those amounts. It could have  
5 been lawyers working directly on that  
6 deal. It could have been people in a  
7 business meeting that were providing an  
8 update as to what those numbers were.

9 Q. As you sit here today, you have  
10 no recollection of who was giving you  
11 those numbers?

12 A. Other than the recollection I  
13 just gave you?

14 Q. That it could have been any  
15 number of people.

16 A. That's not what I said.

17 MR. BRYAN: Object to form.

18 Q. You said it could have been  
19 lawyers working directly on that deal. It  
20 could have been people in business  
21 meetings that were providing an update.

22 A. Yes.

23 Q. So it could have been any -- any  
24 one or more of those groups of people, is  
25 that what you are saying?

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2 MR. BRYAN: Object to form.

3 A. It could have been the lawyers  
4 working for Ally in connection with trying  
5 to get that settlement or it could have  
6 been people in a business context working  
7 on the -- trying to get that Ally ResCap  
8 settlement done.

9 Q. The first waterfall you wanted  
10 to see using those numbers for an Ally  
11 contribution was one where there would be  
12 no money for any securities fraud  
13 plaintiffs but keeping miscellaneous GUC  
14 at same assumed level we had been  
15 assuming, right?

16 A. Assuming for the moment no  
17 dollars to any securities fraud investor  
18 plaintiffs and keeping miscellaneous GUC  
19 at same assumed level we have been  
20 assuming, yes.

21 Q. And GUC was general unsecured  
22 creditors?

23 A. Yes. Put it this way, that was  
24 an acronym that was being used by ResCap  
25 and its professionals to describe a

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2 certain class of potential claimants in  
3 the estate. I don't know what they meant  
4 by it. And I don't know who they meant by  
5 it. But it had been kind of a fixture in  
6 several of the waterfalls. And it's that  
7 acronym and that fixture in the waterfalls  
8 that I'm referring to and not any  
9 particular group of plaintiffs -- or  
10 claimants.

11 Q. When you said keeping  
12 miscellaneous GUC at same assumed level we  
13 had been assuming, what level had been  
14 assumed?

15 A. I would refer you to those  
16 various waterfalls for whatever the  
17 assumption had been made in connection  
18 with that GUC, miscellaneous GUC. I was  
19 not responsible for preparing those  
20 waterfalls. I don't know what they meant  
21 by GUC. And so I don't want to mislead  
22 here and suggest that GUC referred to any  
23 particular claimants.

24 Q. Mr. Devine, you were the one who  
25 was asking for this waterfall and what I'm

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2 trying to find out from you is what it  
3 was -- I'm trying to find out why you  
4 wanted it. And you are telling me you  
5 didn't understand a thing about what you  
6 were asking for?

7 MR. BRYAN: Objection to form.

8 That's not at all what you asked.

9 That's an entirely new question.

10 Q. Are you -- are you telling me  
11 today that you have no knowledge of the  
12 level at which it had been assumed a  
13 waterfall would flow to miscellaneous  
14 general unsecured creditors.

15 A. The purpose of my instruction  
16 there was to isolate variables that I  
17 didn't understand and didn't want moving  
18 around while I was driving variables that  
19 I did understand better. And so that's  
20 why as I sit here today I -- I have no  
21 idea what Renzi or Cancelliere or any of  
22 the professionals for the estate meant at  
23 that time by the miscellaneous GUCs or  
24 mean today by that class. I just didn't  
25 want them moving other variables around

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2 when they were plugging in these variables  
3 for the places that I was asking them to  
4 do it.

5 Q. Why did you want it assumed that  
6 there would be no dollars to any  
7 securities fraud investor plaintiffs.

8 A. I think that Mr. Lee had  
9 informed me that ResCap intended not to  
10 assign any dollars to any securities  
11 plaintiffs. ResCap had determined not to  
12 assign any claim or valuation of any claim  
13 to any securities plaintiffs.

14 Q. What -- what was the -- what was  
15 the language there?

16 A. Securities/fraud investor  
17 plaintiffs. And so again, I was not  
18 directing the creation of a waterfall. I  
19 was trying to hold still certain variables  
20 over which I had no control it being a  
21 ResCap waterfall.

22 Q. Okay. Mr. Devine, looking at  
23 the -- at the two scenarios you were  
24 requesting. One -- one kept the  
25 miscellaneous general unsecured creditors

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2 at the same assumed level we had been  
3 assuming and the other one assumed that  
4 the general unsecured creditors ended up  
5 at only half the value with being -- had  
6 been -- you had been assuming. Why did  
7 you want to see those separate waterfall  
8 presentations?

9 A. Well, first of all, you are  
10 assuming that I wanted to see them.

11 Q. You asked for them?

12 A. I asked for them. But you are  
13 assuming that I wanted to see them. And  
14 that -- that may not be an accurate  
15 assumption. At this point in the  
16 conversation there were many -- there was  
17 a lot of work going on at the same time.  
18 And I may have been asked by any number of  
19 people to please throw some alternative  
20 potential waterfalls up against the wall  
21 and see what had happened.

22 And my -- my best memory as I  
23 sit here today is I wouldn't have come up  
24 with the notion of assuming that  
25 miscellaneous GUCs end up at only half the



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2 value we had been assuming because I don't  
3 recall understanding the level of GUCs to  
4 be of interest to my client at that point.  
5 And it's certainly true that I did not  
6 understand my client to have any say as to  
7 the assignment as amongst the various  
8 creditor classes of any particular claim  
9 or eventual disbursement in the waterfall.

10 Q. So if you didn't come up with  
11 this, Mr. Devine, who was it that asked  
12 you to get these waterfalls from Mr. Renzi  
13 and Mr. Cancelliere?

14 MR. PRINCI: Objection as to  
15 form.

16 A. Well, it would help me to know  
17 whether or not I was the originator of  
18 this e-mail or whether it was cut off from  
19 a larger string, but even so at that point  
20 recognize that Renzi didn't work for me  
21 and Cancelliere didn't work for me. So  
22 the fact that I'm asking them to do  
23 something and cc'ing Gary Lee suggests to  
24 me that I'm sort of a communication point  
25 in helping to get some waterfall work

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2 done -- and then as you can see as you go  
3 up the exhibit on page 1 of Exhibit 142,  
4 Renzi responds to me, cc's Gary and  
5 William Nolan, I don't know who that is.  
6 And then I say, "Thanks, Mark," da, da,  
7 da, da, "pass some additional stuff on."  
8 But I'm sure to include Gary Lee at MoFo  
9 as cc and Ruckdaschel for that matter who  
10 is ResCap attorney to suggest to me that  
11 I'm assisting in the process of running  
12 down data again toward what appears to be  
13 something of a tight deadline. It's 644  
14 in the e-mail at the top. And the subject  
15 line of the e-mail is --

16 Q. Is this in response to some  
17 question I asked you?

18 MR. PRINCI: I'll object. He's  
19 not through with his answer. Don't  
20 interrupt the witness.

21 MR. KAUFMAN: Hey, you know  
22 what, I'm taking back the three  
23 minutes he just spent talking about  
24 something that I didn't even ask  
25 about.

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2 MR. BRYAN: He was in the middle  
3 of an answer. You do not interrupt  
4 the witness.

5 MR. KAUFMAN: Yeah, okay. I'm  
6 just telling you.

7 MR. BRYAN: Mr. Devine --

8 MR. KAUFMAN: I am not going to  
9 be cut off by Mr. Devine occupying all  
10 of the time he can by -- by saying  
11 whatever he feels like on the record.

12 MR. BRYAN: Well, that's an  
13 entirely inaccurate description of  
14 what's been happening today. He's  
15 been answering your questions  
16 directly. Now, I would ask that you  
17 pause, let Mr. Devine complete his  
18 answer and then ask your next  
19 question.

20 Q. Go ahead, Mr. Devine, finish.

21 A. So I was just saying that it may  
22 well be that I was participating with the  
23 ResCap team toward trying to get a deal  
24 done that both ResCap and Ally were trying  
25 to get done and if you look at the e-mails

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2 it appears that we were all working  
3 against a deadline. I don't know what the  
4 purpose of that or the reason for that  
5 deadline was but we were working to try to  
6 get something done by 8:00 p.m.

7 Q. Who asked you to request these  
8 waterfalls from Mr. Renzi and  
9 Mr. Cancelliere, give me a name?

10 MR. PRINCI: Objection as to  
11 form. Asked and answered.

12 A. I -- I don't remember.

13 Q. But you are sure it wasn't you  
14 who came up with the idea to request these  
15 waterfalls; is that correct?

16 A. I'm just looking at the  
17 Exhibit 142 --

18 Q. Just answer me. Do you -- was  
19 it -- are you sure it wasn't you who  
20 asked -- who came up with the idea to  
21 request these waterfalls?

22 MR. PRINCI: Objection.

23 MR. BRYAN: You are doing it  
24 again. Don't interrupt witness.

25 MR. KAUFMAN: I'm entitled to an

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2 answer to my question.

3 MR. BRYAN: And he was about to  
4 answer your question before you  
5 interrupted him again. I'd ask you to  
6 calm down. Let the witness --

7 MR. KAUFMAN: I am calm.

8 MR. BRYAN: Well, let the  
9 witness answer your questions.

10 MR. KAUFMAN: I'm glad this is  
11 all on videotape.

12 MR. BRYAN: Do you recall the  
13 question pending?

14 THE WITNESS: I -- I thought it  
15 was to try to find out whether or not  
16 I remembered who asked me to run the  
17 waterfalls.

18 Q. No. Are you sure it wasn't you  
19 who came up with the idea to request these  
20 waterfalls?

21 A. No, I'm not sure it wasn't me.

22 Q. Okay.

23 A. As I testified, I don't remember  
24 who -- where -- where it came from, where  
25 the source of that question was.

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2 Q. So it could have been you?

3 A. Could have been Kathy Patrick.

4 It could have been Gary Lee. It could  
5 have been Tammy Hamzephour. Could have  
6 been John Ruckdaschel.

7 Q. And it could have been you?

8 A. Could have been me.

9 Q. Okay.

10 A. As I said, that's unlikely.

11 Q. Did Mr. Renzi and  
12 Mr. Cancelliere thereafter provide you  
13 with the two waterfalls you requested?

14 A. I don't remember.

15 MR. KAUFMAN: Let's mark as the  
16 next exhibit an e-mail on May 7, 2012,  
17 from Mr. Devine to Ms. Patrick.

18 (9019 Exhibit 143, e-mail dated  
19 May 7, 2012 from Mr. Devine to  
20 Ms. Patrick, marked for  
21 identification, as of this date.)

22 MR. KAUFMAN: This one shouldn't  
23 be put up on the screen.

24 UNIDENTIFIED SPEAKER: Can I  
25 publish this?

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2 today to believe that your e-mail that was  
3 produced to us by your counsel was altered  
4 in some way?

5 A. I just don't remember sending an  
6 e-mail at 5:18 in the morning.

7 Q. Well, obviously you did, right?

8 A. It seems to indicate that I sent  
9 it at 5:18 in the morning.

10 Q. You told Ms. Patrick that --  
11 that the numbers you had shared with her  
12 that night, 750 plus 100 plus 200, the  
13 waterfalls you had run appear to show that  
14 PLS R&W claims across all of the trusts  
15 would take at above the \$1 billion  
16 threshold she had mentioned.

17 Do you see that?

18 A. Yeah, I -- I read the first  
19 paragraph.

20 Q. Okay. Can you explain what you  
21 were describing to Ms. Patrick in saying  
22 that across the entire run of all the  
23 trusts would take at above the threshold  
24 you had mentioned to me of a billion?  
25 What were you talking about?

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2 A. So if I remember correctly and  
3 just judging too by the e-mail in context,  
4 there -- the numbers I shared tonight --  
5 I'm not sure whether or not ResCap would  
6 have provided waterfalls by this point. I  
7 know they provided some originals. I  
8 don't know whether they provided updated  
9 waterfalls or not. But in any event, it  
10 appears that we were both talking about  
11 some waterfalls, meaning what ResCap was  
12 projecting I guess is the best word with  
13 all sorts of assumptions and caveats, et  
14 cetera, including lots of unknowns as to  
15 how those waterfalls might or might not  
16 play out in an eventual ResCap filing.

17 But it appears that we are  
18 talking about those sorts of waterfalls  
19 and it appears that the waterfalls showed  
20 that total rep and warrant on all the PLS,  
21 that is, that would have referred in  
22 context to all rep and warrant claims of  
23 all sorts and all related claims to rep  
24 and warrant on all the private label  
25 securities, which by that time in the



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2 conversation would have meant the 392 or  
3 whatever the proper number is of  
4 securitizations that the ResCap entities  
5 offered during the subject years. Wrapped  
6 and nonwrapped referred to whether or not  
7 there was or wasn't monoline participation  
8 in some or all of the deal, particular  
9 deal.

10 "And with claims on all ResCap  
11 PLS rep and warrant." I don't remember  
12 what that next part refers to. "And with  
13 claims on all ResCap PLS rep and warrant  
14 valued at the figure you mentioned  
15 tonight." I just don't know what that  
16 was. That may have referred to a defect  
17 rate and/or a severity rate across the  
18 population.

19 But whatever it referred to,  
20 that if you assumed whatever that was, the  
21 PLS rep and warrant valued at the figure  
22 you mentioned tonight -- she must have  
23 mentioned a defect rate or some other  
24 figure -- appear to show that in light of  
25 all those assumptions that the PLS rep and

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2 warrant across the entire run of all the  
3 trusts, that is the entire class beyond  
4 her particular client holdings, would take  
5 at above the threshold you, meaning Kathy  
6 Patrick, had mentioned to me of a billion.

7 Q. What was the billion dollar  
8 threshold?

9 A. I don't remember a billion  
10 dollar threshold. Reading this now, the  
11 bid that all of the trusts would take  
12 referred to sort of a final outcome.

13 Q. I understand that. But what was  
14 the -- what was the threshold? What was  
15 the billion dollar threshold above which  
16 the trust would take?

17 A. I don't remember.

18 Q. What was the significance of the  
19 trust taking at above that level?

20 A. Reading this now, it looks like  
21 she had communicated to me an outcome  
22 figure that I -- that I used the word  
23 "threshold" with, that that class of  
24 claimants would take -- would -- would end  
25 up with over a billion dollars. I think

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2 that's what it means.

3 In context I was clear from  
4 square one never to promise any take to  
5 anybody, any outcome. Because first of  
6 all, it wasn't my estate and second I had  
7 no idea how the various claimants would  
8 end up taking. And she understood that.

9 Q. The waterfalls that you  
10 described in this e-mail excluded any  
11 recovery for securities in common law  
12 fraud plaintiffs, correct?

13 A. It looks here in the second  
14 paragraph like there was a waterfall  
15 assumption that securities in common law  
16 fraud plaintiffs claims would be  
17 subordinated.

18 Q. And you pointed out to  
19 Ms. Patrick that you expected those  
20 claimants to fight for a seat at the table  
21 and that it would be hard to imagine there  
22 wouldn't be some flow to them, right?

23 A. That seems to be what I was  
24 saying to her at that time.

25 Q. Why did you believe it was hard

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2 to imagine that those claimants wouldn't  
3 get at least some recovery?

4 A. Well, first of all, I have no  
5 experience in a bankruptcy anything near  
6 this magnitude or complexity. So I was  
7 probably well beyond my comfort zone in  
8 making a statement like that. I did know,  
9 though, that there were parties out there  
10 who had no rep and warrant claims because  
11 they had sold their interests in the  
12 various securities and so to my  
13 understanding would not participate in a  
14 recovery in the rep and warrant structure.  
15 And that they would nonetheless seek to --  
16 try to recover against the estate on the  
17 securities in common law claims.

18 Q. Yes. And you also said it was  
19 hard to imagine there wouldn't be some  
20 flow on those claims. Why did you believe  
21 that?

22 A. Based on my very general and  
23 inexperienced understanding of the bankruptcy  
24 process where most parties who think they  
25 have claims eventually try to assert them.

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2 Q. So you are testifying that you  
3 were having conversations and e-mail  
4 exchanges with Ms. Patrick without knowing  
5 what you were talking about?

6 MR. PRINCI: Objection to form.

7 MR. BRYAN: Objection as to  
8 form. That's not at all what he said.

9 MR. KAUFMAN: That is what he  
10 said.

11 MR. BRYAN: The record is  
12 perfectly clear, that's not what he  
13 said.

14 A. Kathy Patrick knew that I wasn't  
15 providing any -- certainly any advice to  
16 her and certainly not speaking on behalf  
17 of anyone with regard to what eventual  
18 outcomes would take place inside of the  
19 bankruptcy.

20 Q. Let me show you document  
21 previously marked as Exhibit 41, which is  
22 an e-mail chain on May 7, 2012.

23 I'd like to focus first on the  
24 first e-mail in this chain which is from  
25 Gary Lee at 9:08 p.m. It's at the bottom

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2 of the second page. Do you see that?

3 A. Yes.

4 Q. Okay. Did you receive that  
5 e-mail?

6 A. It looks like I did.

7 Q. And Mr. Lee reported that after  
8 several calls with Ms. Patrick that  
9 evening she had come back at \$10 billion  
10 all in PLS and R&W with a 22 percent  
11 defect rate.

12 Do you see that?

13 A. I see that. Although the way  
14 you pronounced that isn't the way I would  
15 read it in context.

16 Q. Now, looking at your e-mail at  
17 10:14 p.m. that night, which begins on the  
18 first page of the exhibit and goes over to  
19 the second page.

20 MR. BRYAN: Phil, I'm sorry to  
21 interrupt but this is a document that  
22 we had raised with the committee as  
23 our clawback that there would be an  
24 appropriate redaction made to this  
25 e-mail on the second page. The

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2 document you just handed the witness  
3 does not have that redaction. So to  
4 the extent you want to question the  
5 witness about everything but his  
6 e-mail that begins Rick and Gary,  
7 that's fine. But I'm not going to let  
8 you ask any questions about that  
9 paragraph.

10 Q. About which paragraph, the one  
11 that starts Rick and Gary?

12 MR. BRYAN: Correct.

13 MR. WYNNE: My understanding is  
14 that we didn't agree to that redaction  
15 or that clawback.

16 MR. BRYAN: Well, that  
17 notwithstanding on the record we are  
18 clawing this document back with an  
19 appropriate redaction and I'm not  
20 going to let you ask any questions  
21 about the second paragraph that begins  
22 "Rick and Gary," semicolon, on the  
23 second page.

24 MR. WYNNE: That's not -- that's  
25 not my understanding of what was

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2 discussed or what was agreed to with  
3 respect to the court. Perhaps we  
4 should go off the record and discuss  
5 this and resolve it.

6 MR. KAUFMAN: Okay. Let's go  
7 off the record.

8 THE VIDEOGRAPHER: The time is  
9 2:48 p.m. and we are off the record.

10 (Brief recess.)

11 THE VIDEOGRAPHER: The time is  
12 2:51 p.m. and we are back on the  
13 record.

14 THE WITNESS: Thanks.

15 Q. Please look at the e-mail that  
16 you sent at 10:14 p.m. on May 7th which  
17 begins at the bottom of the first page of  
18 Exhibit 41 and continues over to the  
19 second page. Do you see that?

20 A. I see that e-mail, yeah.

21 Q. And did you send that e-mail?

22 A. Yes. It looks like I sent that  
23 e-mail.

24 Q. The first part of your e-mail  
25 was addressed specifically to Mark Renzi



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2 and Jeff Cancelliere, right?

3 A. Yes.

4 Q. And you said "KP needs defect  
5 rate. If we can persuade her team that  
6 they are using wrong severities, etc., and  
7 can preserve the defect rate, we can pick  
8 away at the \$10 billion."

9 Why did you believe Ms. Patrick  
10 needed a certain defect rate for her  
11 settlement?

12 A. I believe that she told me that  
13 her analysis and assessment of the loans  
14 at issue had indicated a certain defect  
15 rate. And notwithstanding the very  
16 natural process of negotiation I  
17 understood that she was reaching a point  
18 where she wasn't going to compromise with  
19 regard to what defect rate applied to this  
20 loan population based on the analysis of  
21 her team.

22 Q. What did you understand the term  
23 "defect rate" to mean?

24 A. It -- the simplest way to  
25 understand it is the rate at which loans

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2 in a particular pool would fail according  
3 to the applicable standards against which  
4 they would be adjudged. And in the  
5 context of the private label securities,  
6 in particular, the defect rate represented  
7 the rate at which loans in the particular  
8 pool at issue violated reps and warrants  
9 according to the terms of the relevant  
10 contract, which included that they must  
11 breach the applicable standards, the  
12 applicable reps and warrants in a way that  
13 materially and adversely impacted the  
14 interests of the counterparties.

15 Q. What was the significance of a  
16 certain defect rate to the settlement  
17 amount as you understood it?

18 A. So there were a lot of moving  
19 parts and this is entirely out of context.  
20 But to answer your question subject to the  
21 variety of factors that were, one measure  
22 of an appropriate claim from Kathy  
23 Patrick's standpoint was again a very  
24 rough level and disregarding for the  
25 moment all sorts of complexities, the

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2 defect rate times the severities, times  
3 the lifetime loss in a particular pool of  
4 loan.

5 So that if you had a defect rate  
6 you had a couple different variables  
7 getting toward what she would have viewed  
8 as an acceptable final low number in the  
9 negotiation. And if the defect rate went  
10 too low, the total dollar number of the  
11 claim would go low as well.

12 Q. So did you understand from your  
13 discussions with Ms. Patrick that the  
14 defect rate was a significant factor in  
15 driving the settlement number she was  
16 looking for?

17 A. One among many.

18 Q. Okay. The next part of your  
19 e-mail addressed to Gary Lee and Rick  
20 Cieri, right?

21 MR. BRYAN: You are talking the  
22 second paragraph?

23 MR. KAUFMAN: Yes.

24 A. Yes.

25 Q. And you asked them "What

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2 spare copy?

3 MR. KAUFMAN: This is the only  
4 one I have got.

5 Q. Do you have the exhibit in front  
6 of you, Mr. Devine?

7 A. Exhibit 1, marked 145?

8 Q. That's correct.

9 A. Yes.

10 Q. You see that's an e-mail from  
11 you to Ms. Patrick on May 8th, 2012, at --  
12 at 12:12 a.m. -- sorry -- on May 8th,  
13 2012, at 12:12 a.m., correct?

14 A. If I'm looking at the right  
15 exhibit which is, ends in Bates 928, it  
16 says from Devine Timothy sent Tuesday, May  
17 8th, 2012 4:11 a.m. Am I looking at the  
18 wrong exhibit?

19 Q. Looking at the top one you  
20 sent -- you sent this e-mail to  
21 Ms. Patrick at 4:11 a.m.?

22 A. I don't know. That sounds  
23 strange to me that I would have sent an  
24 e-mail out at --

25 Q. However strange, is that your

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2 e-mail, Mr. Devine?

3 A. It looks like my e-mail.

4 Q. Do you have any reason to doubt  
5 it's your e-mail?

6 A. I don't have reason to doubt  
7 it's my e-mail.

8 Q. You said in that e-mail "I'm  
9 getting lots of pressure on valuation  
10 now." Who were you getting pressure from?

11 A. Well, it looks like from reading  
12 the e-mail everything we know about our  
13 product, referring to the ResCap  
14 securitizations and the collateral  
15 underneath them, from origination through  
16 pooling through reps and diligence through  
17 servicing makes our folks believe we are  
18 better, that is lower, than Countrywide by  
19 a large margin. I am being asked to  
20 explain how we could agree to a defect  
21 rate 150 of Countrywide's.

22 So judging by that context I was  
23 probably getting pressure from people on  
24 the ResCap side who were saying that a  
25 defect rate 150 percent of Countrywide's

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2 Did you send the e-mail to  
3 Mr. Cancelliere at 5:50 a.m. on May 9th?

4 A. I don't remember what time I  
5 sent it but it looks here like an e-mail  
6 from me to Jeff Cancelliere.

7 Q. You sent that e-mail, didn't  
8 you?

9 A. It looks like it.

10 Q. And you wrote to  
11 Mr. Cancelliere, "What is the defect rate  
12 at 8.7 billion according to her  
13 severities, etc., and according to ours."

14 Do you see that?

15 A. Yes.

16 Q. Why did you want that  
17 information?

18 A. Well, let's start with the  
19 question which distinguishes her  
20 severities and ours. Because as I  
21 mentioned earlier, Kathy Patrick's  
22 formulas applied different severities to  
23 the collateral in the pools that underlay  
24 the various securitizations. And if you  
25 apply a more aggressive severity, meaning

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2 that loans are more likely to fail  
3 according to whatever macroeconomic or  
4 otherwise or other stresses you put  
5 against it, your defect rate would be  
6 lower if you -- if you isolated two of the  
7 more significant variables that arrive at  
8 an outcome which -- with regard to total  
9 exposure.

10 And so it was important to  
11 understand the defect rate at a couple of  
12 different severities.

13 Q. Where did the \$8.7 billion  
14 number come from in your e-mail to  
15 Mr. Cancelliere?

16 A. Unfortunately, I don't have a  
17 timeline in front of me with regard to the  
18 various communications with the parties.  
19 But at some point it must have been  
20 communicated to me by either Gary Lee or  
21 Kathy Patrick that they were at least  
22 talking about a valuation figure for the  
23 allowed claim of this class at  
24 \$8.7 billion.

25 Q. And did you want to ascertain

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2 based on information that you were  
3 requesting from Mr. Cancelliere, whether  
4 that \$8.7 billion number could be  
5 supported by a defect rate?

6 MR. BRYAN: Objection to form.

7 A. So the question is -- sorry, I  
8 didn't get the question.

9 Q. Did you want to ascertain based  
10 on information that you were requesting  
11 from Mr. Cancelliere whether that  
12 \$8.7 billion number could be supported by  
13 a defect rate?

14 MR. BRYAN: Object to form.

15 A. I don't understand what you mean  
16 by whether it could be supported by a  
17 defect rate.

18 Q. You were asking Mr. Cancelliere  
19 what is the defect rate at \$8.7 billion,  
20 right?

21 A. Correct.

22 Q. Okay. What I'm asking you is  
23 whether you wanted that defect rate to see  
24 whether it could support an \$8.7 billion  
25 claim, right?



1 TIMOTHY DEVINE

2 MR. PRINCI: Objection as to  
3 form.

4 MR. BRYAN: Objection to form.

5 A. I don't understand what you mean  
6 by support. I think what I was asking him  
7 was very simple, what is the defect rate  
8 at 8.7 billion. And I think he understood  
9 my question correctly because he gave me  
10 an answer. If you use our 44.1 billion  
11 which was apparently our severity on the  
12 population, and multiply times a defect  
13 rate to get to 8.7, you'd have the figure  
14 of 19.7. If you used Kathy Patrick's  
15 severities, which apparently we understood  
16 to be 48.7 billion, then the defect rate  
17 would be around 17.9.

18 Q. Okay. What significance, if  
19 any, did you attach to the information  
20 Mr. Cancelliere gave to you?

21 A. I know that just based on the  
22 series of e-mails that we looked at  
23 preceding this one that parties were  
24 looking at the defect rate to compare it  
25 to the Bank of America settlement.

1 TIMOTHY DEVINE

2 Q. Did the information  
3 Mr. Cancelliere gave to you in this e-mail  
4 make you comfortable with an allowed claim  
5 at \$8.7 billion?

6 MR. BRYAN: Object to form.

7 A. What do you mean by comfortable?

8 Q. Willing to go along with it.

9 A. All right. So with that  
10 understanding in terms -- willing to go  
11 along with it in the context of the  
12 negotiation of a settlement by ResCap of  
13 an allowed claim based on that number?

14 Q. Yes.

15 A. I'm not sure as of 5/9/2012 at  
16 that time whether I was comfortable with  
17 it or not. Because it was only one term  
18 in a very complicated series of  
19 transactions. And it would have been  
20 within that much, much larger context as  
21 to whether or not I would have advised the  
22 client or not that that was a comfortable  
23 number.

24 Q. Were you representing ResCap on  
25 May 9th, 2012?

1 TIMOTHY DEVINE

2 Q. Okay. Did there come a time  
3 when you learned who it was, what  
4 individuals were negotiating a settlement  
5 between ResCap and AFI?

6 A. Yes.

7 Q. Okay. When did you learn that?

8 A. I don't remember when I learned  
9 that.

10 Q. Did you learn it before or after  
11 the ResCap board gave its approval to the  
12 settlement with Kathy Patrick?

13 A. I don't know.

14 Q. Okay. What individuals did you  
15 come to learn negotiated the settlement  
16 between AFI and ResCap?

17 A. Well, I may or may not be  
18 correct but you are asking me for my  
19 understanding. It was Mike Carpenter for  
20 AFI with the independents of the ResCap  
21 board.

22 Q. During the course of the  
23 negotiations with Ms. Patrick, up until  
24 May 9th, weren't you -- weren't you being  
25 kept advised about the progress of

1 TIMOTHY DEVINE

2 negotiations between AFI and ResCap?

3 A. For what time period, sorry?

4 Q. In April and May of -- of 2012,  
5 while the negotiations with Kathy Patrick  
6 were in the later stages, weren't you kept  
7 apprised of the status of negotiations  
8 between AFI and ResCap?

9 A. Periodically.

10 Q. Who was keeping you apprised?

11 A. I guess I would have heard from  
12 Ally's counsel from time to time.

13 Q. Meaning who?

14 A. Or -- meaning Rick Cieri, Ray  
15 Schrock. It could also be that I received  
16 an update in connection with a larger  
17 discussion with lawyers and clients.

18 Q. Give me the names of the people  
19 you are talking about?

20 MR. BRYAN: Objection to form.

21 He just -- he did.

22 Q. Besides Mr. Schrock and  
23 Mr. Cieri, who else?

24 A. The business clients at AFI.

25 Q. Meaning who?

1 TIMOTHY DEVINE

2 A. Mike Carpenter, Jeff Brown, Bill  
3 Solomon.

4 Q. How closely were you kept  
5 advised of the progress of those  
6 negotiations between AFI and ResCap during  
7 that period? Last half of April, first  
8 couple of weeks in May.

9 A. As I say, it was periodic. I  
10 was not -- I was not participating in the  
11 negotiation of it. I certainly was not  
12 privy to daily developments by any means.

13 Q. But when you say periodic, what  
14 does that mean, every other day, every two  
15 days, what?

16 MR. PRINCI: Objection as to  
17 form.

18 A. Just sitting here today, I just  
19 don't recall. Nobody -- nobody sent out a  
20 schedule to keep me abreast of what was  
21 going on on that negotiation.

22 Q. But you were kept abreast,  
23 weren't you?

24 A. Periodically.

25 Q. Okay. You did know that if

1 TIMOTHY DEVINE

2 MR. KAUFMAN: Let's mark as the  
3 next exhibit an e-mail from Mr. Devine  
4 to Mr. Lee on May 9th, 2012. Bates  
5 number RC 9019\_00049196.

6 (9019 Exhibit 147, e-mail from  
7 Mr. Devine to Mr. Lee on May 9th,  
8 2012, Bates RC 9019\_00049196, marked  
9 for identification, as of this date.)

10 Q. Let me show you what we just  
11 marked as Exhibit 147.

12 A. Thank you.

13 Q. Is that an e-mail you sent to  
14 Mr. Lee at 9:03 a.m. on May 9th, 2012?

15 A. Well, it looks like an e-mail  
16 that I sent to Gary Lee and cc'd Ray Cieri  
17 and Ray Schrock. As I said, I'm not sure  
18 about the time because some of these have  
19 been produced with times that don't seem  
20 to make sense to me.

21 Q. Do you have any reason to doubt  
22 that this is an e-mail you sent?

23 A. No.

24 Q. Okay. You said to Mr. Lee,  
25 "Gary, as I told you on the phone, Ally

1 TIMOTHY DEVINE

2 will support the \$8.7 billion allowed  
3 claim. There is no new Ally money. Hard  
4 stop at 750 plus 200 plus 100. Thanks,  
5 Tim." Right?

6 A. Yes. That's what it says.

7 Q. At the time you sent this e-mail  
8 to Mr. Lee, had the amount of AFI's  
9 contribution to a settlement been agreed  
10 upon to your knowledge?

11 A. As I said before, I don't know  
12 when that amount was agreed upon.

13 Q. Had Mr. Lee been pressing you  
14 for a larger contribution from AFI?

15 A. Mr. Lee knew because I told him  
16 that I was not going to negotiate that  
17 number with him. That I didn't have  
18 authority to negotiate it for him -- with  
19 him and that I didn't intend to do so.

20 Q. But you did make clear to him,  
21 did you not, in this e-mail, that there  
22 was not going to be more Ally money, isn't  
23 that what you say?

24 A. The e-mail here does not refer  
25 to -- it does not constitute an e-mail

1 TIMOTHY DEVINE

2 from me to Gary Lee about the Ally and  
3 ResCap settlement. It is about Gary and I  
4 concluding what may have been perceived on  
5 his part as an open issue as to the  
6 resolution of the deals that he and I  
7 actually were working on resolving, which  
8 were the ResCap deal with Kathy Patrick  
9 and the PSA that Kathy Patrick and ResCap  
10 and Ally entered.

11 Q. Mr. Devine, you said hard stop  
12 at 750 plus 200 plus 100. Isn't that the  
13 amount that AFI was proposing to  
14 contribute as part of the Kathy Patrick  
15 settlement?

16 MR. PRINCI: Objection as to  
17 form.

18 MR. BRYAN: Objection to form.

19 A. No, it's not. It's the amount  
20 that Ally and ResCap were negotiating in  
21 their settlement agreement and it became  
22 of interest in the agreements between  
23 ResCap and Kathy Patrick on the one hand  
24 and the tripartite agreement between Kathy  
25 Patrick's clients, ResCap and Ally as a



1 TIMOTHY DEVINE

2 term among many in context in the -- in  
3 those two agreements. But it was not a  
4 negotiation in connection with those --  
5 the resolution of those deals.

6 Q. So you say, Mr. Devine. But  
7 isn't it a fact that it was more than just  
8 of interest to Ms. Patrick what the amount  
9 Ally would be contributing as part of what  
10 her clients might share in under a plan?  
11 It was a key element of what her entire  
12 settlement was? You understood that,  
13 didn't you?

14 MR. PRINCI: Objection as to  
15 form.

16 MR. BRYAN: Objection as to  
17 form. And, Mr. Kaufman, you are  
18 entitled to your views but do not try  
19 to belittle the witness in your  
20 questioning. That commentary should  
21 stop.

22 Q. You understood that, didn't you?

23 MR. PRINCI: Objection as to  
24 form.

25 MR. BRYAN: Same objection.

1 TIMOTHY DEVINE

2 A. One of the features of the  
3 settlement agreement that ResCap entered  
4 with Kathy Patrick and then the settlement  
5 agreement or the plan support agreement  
6 between AFI, the ResCap entities and Kathy  
7 Patrick involved the amount of cash that  
8 Ally would put into the estate. That's  
9 certainly correct. There's no question  
10 about that.

11 Q. And you said there is no new  
12 Ally money. How did you know that?

13 A. The question arose as to whether  
14 or not Ally intended to put any additional  
15 money into the Ally/ResCap settlement.  
16 And the answer was no.

17 Q. Who gave you that information?

18 A. I don't recall who gave me that  
19 information.

20 Q. So somebody at AFI told you by  
21 May 9th at 9:03 a.m. that Ally wasn't  
22 going to put anything more into the pot?

23 A. If by the pot you mean the Ally  
24 and ResCap settlement agreement --

25 Q. Yes.

1 TIMOTHY DEVINE

2 A. -- that either was or wasn't  
3 finalized by that point, the answer is  
4 yes.

5 Q. Is it fair to say that you were  
6 telling Mr. Lee in this e-mail as -- that  
7 in effect he could take it or leave it?

8 MR. PRINCI: Objection as to  
9 form.

10 A. No, that's not correct. As I  
11 told you, I wasn't negotiating that figure  
12 with him. This was more informational  
13 than anything else.

14 Q. You said you -- Gary, as I told  
15 you on the phone Ally will support the  
16 \$8.7 billion allowed claim but there  
17 wasn't going to be any more Ally money.  
18 So what I'm asking you is, weren't you  
19 telling Mr. Lee in effect you can get the  
20 support from Ally for the \$8.7 billion  
21 claim but not for any more money from AFI?

22 MR. BRYAN: Object to form.

23 MR. PRINCI: Objection as to  
24 form.

25 Q. Isn't that what you were telling

1 TIMOTHY DEVINE

2 him?

3 A. No. In fact that's a fallacious  
4 question. It's just not at all  
5 characteristic of what kind of  
6 conversation we were having.

7 Q. It's exactly what you said to  
8 him?

9 MR. PRINCI: Objection to form.

10 MR. BRYAN: Objection to form.

11 A. No, it's not.

12 Q. You didn't tell him that AFI  
13 would support the \$8.7 billion allowed  
14 claim?

15 MR. PRINCI: Objection.

16 Argumentative.

17 A. I did in this note say, "Gary,  
18 as I told you on the phone, Ally will  
19 support the \$8.7 billion allowed claim."  
20 And Ally did.

21 Q. Okay. But you also said there  
22 is no new Ally money. Hard stop at 750  
23 plus 200 plus 100. You also said that,  
24 correct?

25 A. Yes, we -- I did say that.

1 TIMOTHY DEVINE

2 You -- you are reading that correctly.

3 Q. And so the combination of the  
4 two things you were telling Gary was Ally  
5 will support the settlement at that number  
6 but not for any more money?

7 MR. BRYAN: Objection to form.

8 Q. Isn't that what you were saying?

9 MR. PRINCI: Objection as to  
10 form.

11 A. No. I think you are entirely  
12 wrong with your understanding of what the  
13 negotiation was. And I have said it three  
14 or four times and you continue to try to  
15 misconstrue it and it's -- it's  
16 frustrating.

17 Q. Okay. Did you think there was  
18 any risk in saying this to Mr. Lee that  
19 the settlement would fall apart as a  
20 result?

21 MR. PRINCI: Objection as to  
22 form?

23 A. Which settlement?

24 Q. The settlement you were  
25 discussing in this e-mail with Mr. Lee.

1 TIMOTHY DEVINE

2 a great contribution from AFI, just yes,  
3 you considered or no, you didn't?

4 MR. PRINCI: Objection as to  
5 form.

6 MR. BRYAN: Objection to form.

7 A. I don't think I probably  
8 considered it in consequence of that  
9 e-mail because I didn't view that  
10 communication as a negotiation with Gary  
11 Lee.

12 Q. Okay.

13 MR. KAUFMAN: Let's take a  
14 five-minute break.

15 THE VIDEOGRAPHER: The time is  
16 4:08 p.m. and we are off the record.

17 (Whereupon, there is a recess in  
18 the proceedings.)

19 THE VIDEOGRAPHER: The time is  
20 4:23 p.m. and we are back on the  
21 record.

22 MR. KAUFMAN: Let's mark as  
23 Exhibit 148 an e-mail chain on  
24 May 9th, 2012 Re: Talcott Franklin.

25 (9019 Exhibit 148, e-mail chain

1 TIMOTHY DEVINE

2 on May 9th, 2012 Re: Talcott

3 Franklin, marked for identification,

4 as of this date.)

5 Q. Directing your attention to the

6 e-mail at the bottom of this exhibit,

7 Mr. Devine, did you send this e-mail on

8 May 9th at 9:04 on two -- at two

9 thousand -- May 9, 2012, at 9:04?

10 A. That's what the e-mail

11 indicates.

12 Q. And you reported on a call you

13 had received from Talcott Franklin; is

14 that correct?

15 A. Just one moment, please.

16 Sorry, what was the question

17 again? Thanks, I have completed reading

18 the e-mail.

19 Q. You reported in your e-mail on a

20 call you had received from Mr. Franklin,

21 right?

22 A. Yes.

23 Q. And Mr. Franklin had told you he

24 was very favorably inclined to sign onto a

25 settlement an plan support agreement and

1 TIMOTHY DEVINE

2 that he was confident his clients would go  
3 along, right?

4 A. As I read here, I'm trying to  
5 remember, there were a lot of the deals  
6 going on at that time. He was very  
7 favorably inclined to support and  
8 participate in what we are doing. And so  
9 at this stage, on Wednesday, May 9th,  
10 given the other e-mails we have seen, I  
11 very likely would have been fairly blunt  
12 and transparent with him with regard to  
13 the state of play. And so the fact that  
14 I'm reporting that he's very favorably  
15 inclined to support and participate in  
16 what we are doing, probably means that he  
17 would be inclined to enter an agreement  
18 like the one that Kathy Patrick was  
19 entering with ResCap and like the one the  
20 three parties were entering into in the  
21 PSA.

22 Q. Specifically a settlement  
23 agreement and a plan support agreement,  
24 right?

25 A. Yes.



1 TIMOTHY DEVINE

2 Q. In the next to last paragraph of  
3 your e-mail you said "I think he would  
4 like to sign something prepetition. I  
5 certainly am not the right person to  
6 negotiate that with him. As you recall,  
7 we sent him a draft of the settlement  
8 agreement and PSA early on."

9 Do you see that?

10 A. I do see that.

11 Q. Why did you think you weren't  
12 the best person to negotiate those  
13 agreements with Mr. Franklin?

14 A. I think because one of the  
15 agreements, the settlement agreement  
16 that's come to be called the RMBS  
17 Settlement Agreement was an agreement that  
18 was between ResCap or the ResCap entities  
19 and the RMBS claimants. And so I would  
20 not be in a position to negotiate that  
21 with him. I didn't have the pen, so to  
22 speak, nor did I actually have the pen  
23 with regard to the PSA even though Ally  
24 would be a party to that agreement.

25 And at this point because the

1 TIMOTHY DEVINE

2 conversations were moving on from sort of  
3 rep and warrant general conversations to  
4 agreements that would take meaning within  
5 the concept of a bankruptcy, I was  
6 indicating that I am not bankruptcy expert  
7 and would not be the right person to  
8 negotiate terms of an agreement in that  
9 context.

10 I would have thought that given  
11 the population of the recipients of this  
12 e-mail I sent, that Gary Lee would have  
13 picked up the conversation with Talcott  
14 Franklin. And it looks like at the top of  
15 this Exhibit 148 that that's exactly what  
16 happened. That Gary Lee responded and  
17 said we can send him a revised agreement  
18 and PSA when we get next draft from KP.

19 MR. KAUFMAN: Let's mark as  
20 Exhibit 149 an e-mail chain on  
21 May 9th, 2012. Bates numbers RC  
22 9019\_00049216 and 9217.

23 (9019 Exhibit 149, e-mail chain  
24 on May 9th, 2012, Bates RC  
25 9019\_00049216 and 9217, marked for

1 TIMOTHY DEVINE

2 favorable and fair to all concerned and I  
3 wanted to get the deal done as I  
4 understood we were on a certain timeline.

5 Q. Looking at the top e-mail in the  
6 chain from Mr. Lee to yourself, among  
7 others, at 10:54 a.m. on May 9th, did you  
8 receive that e-mail?

9 A. It looks like I did, yes.

10 Q. And Mr. Lee wrote, "We will be  
11 seeking ResCap board approval today. Does  
12 Ally's board need to approve as it is  
13 signing the PSA and ResCap is agreeing to  
14 settle a claim in excess of 25 million,  
15 which requires Ally approval under Ally's  
16 governance framework. Please let us  
17 know."

18 Did AFI's board need to approve?

19 A. I don't know.

20 Q. Did Mr. Lee, to your knowledge,  
21 receive a response to his inquiry?

22 A. I don't know.

23 Q. Does Mr. Lee's reference to the  
24 ResCap board -- his reference to seeking  
25 ResCap board approval today, meaning

1 TIMOTHY DEVINE

2 May 9th, refresh your recollection of the  
3 timeline in relation to the e-mails that  
4 appear below that e-mail?

5 A. Yes, it does.

6 Q. In what way?

7 A. Well, it looks like that ResCap  
8 or at least Gary Lee at that point  
9 intended to bring the ResCap board, if I  
10 understand correctly what he was referring  
11 to, the RMBS -- proposed RMBS settlement  
12 agreement and the PSA, on that day.

13 MR. KAUFMAN: Let's mark as the  
14 next exhibit, which is 150 an e-mail  
15 chain on May 9th and May 10th, 2012,  
16 between Mr. Devine and Ms. Patrick.

17 (9019 Exhibit 150, e-mail chain  
18 dated May 9th and May 10th, 2012,  
19 marked for identification, as of this  
20 date.)

21 A. Thank you.

22 Q. Directing your attention to the  
23 e-mail at the bottom of the first page of  
24 this exhibit, and continuing over to the  
25 second page, which is an e-mail from

1 TIMOTHY DEVINE

2 Ms. Patrick to you on May 9th at  
3 10:52 p.m. Did you receive that e-mail?

4 A. It looks like I did.

5 Q. And Ms. Patrick wrote to you for  
6 help regarding an apparent disagreement  
7 she was having with Mr. Lee, correct?

8 A. I have just finished reading the  
9 e-mail. What was the question? Sorry.

10 Q. Ms. Patrick wrote to you for  
11 help regarding an apparent disagreement  
12 she was having with Mr. Lee, correct?

13 A. I think that's probably a fair  
14 summary of the e-mail.

15 Q. Mr. Lee was saying he thought  
16 Ms. Patrick's clients would be released  
17 from securities claims as well as PLS and  
18 R&W claims and Ms. Patrick was saying the  
19 opposite, right?

20 A. I don't know what you mean by  
21 PLS and R&W claims. How are you using the  
22 word PLS there?

23 Q. Put back claims?

24 A. As distinct from rep and warrant  
25 claims.

1 TIMOTHY DEVINE

2 Q. No. Put back and rep and  
3 warrant claims. Didn't you understand  
4 that Mr. Lee was saying he thought  
5 Ms. Patrick's clients would be -- would be  
6 releasing those claims as well as  
7 securities claims and Ms. Patrick was  
8 saying that there was no release of  
9 securities claims from her clients, isn't  
10 that the disagreement you understood?

11 A. The disagreement as I can read  
12 now and understand from reading the e-mail  
13 is that Gary was apparently telling Kathy  
14 that the release, and I assume they were  
15 talking about the release contained inside  
16 of the ResCap and Kathy Patrick RMBS  
17 settlement agreement, that that release  
18 should include securities claims by those  
19 claimants as well as everything else. And  
20 she was saying that no, the release would  
21 not include securities claims in its  
22 scope.

23 Q. Right. And Ms. Patrick was  
24 saying that her clients never offered or  
25 agreed to release securities claims

1 TIMOTHY DEVINE

2 because they didn't own those claims,  
3 right?

4 A. I don't see where it says she  
5 didn't -- she claimed they didn't own the  
6 claims.

7 Q. Okay. Ms. Patrick was saying  
8 her clients hadn't offered to release  
9 those claims because they weren't in a  
10 position to release those claims, right?

11 A. Who does the they refer to?

12 Q. Her clients.

13 A. No, I don't understand her to  
14 have said that.

15 Q. You didn't understand that  
16 that's what her point was?

17 A. No.

18 Q. Why did you think Ms. Patrick  
19 believed that her clients were not going  
20 to be releasing securities claims as part  
21 of their settlement with ResCap?

22 A. Because as Kathy Patrick told  
23 ResCap from the beginning, her  
24 representation of those clients did not  
25 extend to issues relating to securities

1 TIMOTHY DEVINE

2 claims.

3 Q. Okay. And you wrote back to  
4 Ms. Patrick at 10:27 p.m. that evening,  
5 correct?

6 A. It looks like it.

7 Q. Okay. And you told her that you  
8 would straighten everything out, right?

9 A. It says --

10 MR. PRINCI: Objection as to  
11 form.

12 A. I assume this is -- again, I'm  
13 not sure here, but I assume this is an  
14 indication that on May 9th, 2012, at  
15 10:27 p.m. that I wrote to Kathy Patrick,  
16 "I'll try to straighten everything out. I  
17 notice some strange questions coming from  
18 Freddie's counsel this evening. Let me  
19 work on it."

20 Q. Right. Did you receive  
21 Ms. Patrick's response to that at the top  
22 of the first page of this exhibit?

23 A. It looks like I did.

24 MR. KAUFMAN: Let's mark as the  
25 next exhibit an e-mail chain on May



1 TIMOTHY DEVINE

2 9th to May 10th, 2012, Bates numbers  
3 RC 9019\_00049486 through 49491.

4 (9019 Exhibit 151, e-mail chain  
5 dated May 9th to May 10th, 2012, Bates  
6 RC 9019\_00049486 through 49491, marked  
7 for identification, as of this date.)

8 Q. Let me show you what we have  
9 marked as Exhibit 151. Let me direct your  
10 attention in the first instance to the  
11 e-mail from Gary Lee to Ms. Patrick at  
12 11:08 p.m. on May 9th which appears on the  
13 page of this exhibit ending in 49488.  
14 It's the bottom two-thirds of that page.

15 Do you see that?

16 A. For 9488 from Gary S. Lee to  
17 Kathy D. Patrick.

18 Q. Yes. You have that?

19 A. I see that.

20 Q. While you are not copied on that  
21 e-mail, it was forwarded to you a little  
22 bit later, was it not?

23 A. It looks like it was.

24 Q. Mr. Lee said there seems to be a  
25 disagreement on a fundamental point and

1 TIMOTHY DEVINE

2 that he was working it -- sorry -- that he  
3 was writing it down so it was clear. Do  
4 you see where he said that?

5 A. I see he says in his e-mail to  
6 Kathy Patrick, "There seems to be  
7 disagreement based on our call with Ropes  
8 on one fundamental point. So we are clear  
9 I'm writing it down so you and I can  
10 discuss." Yep, I see it.

11 Q. And the disagreement was over  
12 whether securities claims were being  
13 released as part of the settlement by  
14 ResCap with Ms. Patrick, right?

15 A. That's what it appears to be,  
16 yes.

17 Q. Mr. Lee was saying he believed  
18 all securities claims were being released  
19 under that settlement as were all other  
20 claims for both wrapped and unwrapped  
21 deals, right?

22 A. I guess that's right.

23 Q. And his reference to Ross was to  
24 Ross Martin at Ropes & Gray, right?

25 A. I assume it was.

1 TIMOTHY DEVINE

2 Q. In the next to last paragraph of  
3 his e-mail Mr. Lee said, "So when Ross  
4 tells me an unknown amount of securities  
5 claims comes on top of this, I get spooked  
6 because that renders a deal at  
7 \$8.7 billion illusory. And if you ask why  
8 I care, which is what Ross screamed at me  
9 this evening, beyond the fact that this is  
10 the deal I sold to our board and thought  
11 we had, it, A, gives everyone an incentive  
12 to manage attacks by other claimants to  
13 get into the class or attempt to get a  
14 bigger share and, B, it is consistent with  
15 the need to maintain recoveries for other  
16 constituents who are key to the success of  
17 the plan."

18 Did I read that correctly?

19 A. You read it correctly.

20 Q. Were you aware that at the  
21 ResCap board meeting earlier that day,  
22 May 9th, Mr. Lee had sold the deal with  
23 Ms. Patrick as including a full release of  
24 all securities claims from Kathy Patrick's  
25 clients and others similarly situated?

1 TIMOTHY DEVINE

2 MR. BRYAN: Object to form.

3 A. So if we are talking about the  
4 page 3 of Exhibit 151, I think I  
5 understand your question to be about a  
6 conversation between Gary Lee and Ross  
7 Martin recounted in an e-mail from Gary  
8 Lee to Kathy Patrick that I wasn't copied  
9 on?

10 Q. No. No.

11 A. Okay.

12 Q. I'm asking you whether you were  
13 aware on May 9th that at the ResCap board  
14 meeting that day Mr. Lee had sold the deal  
15 to the board, had sold the deal with  
16 Ms. Patrick, to the board as including a  
17 full release of all securities claims?

18 MR. PRINCI: Objection as to  
19 form.

20 Q. Yes, you were aware of that or  
21 no, you weren't?

22 MR. BRYAN: Objection as to  
23 form.

24 MR. PRINCI: Objection as to  
25 form.

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2 A. I don't know what Mr. Lee told  
3 the board. I -- I don't know what Mr. Lee  
4 told the board.

5 Q. So is it your testimony that you  
6 were not aware that he did that?

7 MR. PRINCI: Objection as to  
8 form.

9 MR. BRYAN: Asked and answered.

10 A. I -- number one, in the series  
11 of e-mails over those several days I have  
12 no idea what I knew at one point or at  
13 another. I'm trying my best to be  
14 accurate here.

15 Second, I don't recall Gary Lee  
16 ever telling me what he was or wasn't  
17 going to tell to the ResCap board.

18 And third, I don't know if I  
19 knew at that -- at that moment in time on  
20 Wednesday at 8:24, whether or not Gary Lee  
21 had sold or not sold or told or not told  
22 something to his ResCap board.

23 Q. But you did receive his e-mail  
24 on Wednesday evening at 11:26 p.m.,  
25 correct?

1 TIMOTHY DEVINE

2 A. Well, I sent an e-mail to Gary  
3 Lee, Jamie Levitt, Noah Ornstein and John  
4 Ruckdaschel, cc'd Cieri and Schrock at  
5 4:29.

6 Q. Right. And you sent that e-mail  
7 in response to Mr. Lee's e-mail at 4:26 on  
8 May 12th, didn't you?

9 A. Yeah, I'm not sure if it's in  
10 response but I did send him an e-mail a  
11 couple minutes later.

12 Q. And you wrote, "Got it. Had  
13 call with KP. We told her PSA support  
14 whole hog is drop dead." That's what you  
15 wrote, right?

16 A. That's what I wrote.

17 Q. And is that what you told  
18 Ms. Patrick?

19 A. I don't remember if I told her  
20 whole hog but if I read this sitting here  
21 now, it looks like I was communicating to  
22 that group that I told her that she had to  
23 support the PSAs in full. And that that  
24 was a provision that Ally would insist on  
25 to the extent Ally could insist on

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2 anything.

3 Q. And by using the phrase "drop  
4 dead" you meant it was nonnegotiable from  
5 Ally's perspective, right?

6 A. I meant that if she wanted our  
7 participation in the PSA she needed to  
8 support it.

9 MR. KAUFMAN: Let's mark as the  
10 next exhibit an e-mail chain on  
11 May 13, 2012 between Mr. Devine and  
12 Talcott Franklin.

13 (9019 Exhibit 155, e-mail chain  
14 dated May 13, 2012 between Mr. Devine  
15 and Talcott Franklin, marked for  
16 identification, as of this date.)

17 A. Okay.

18 Q. Looking at the first e-mail in  
19 this chain which starts at the bottom of  
20 the first page, did you send that e-mail  
21 to Mr. Franklin at 12:16 p.m. on  
22 May 13th -- I'm sorry -- at 1:28 p.m. on  
23 May 12th?

24 A. It looks like I did. Again, I'm  
25 not sure of the timing but it looks like I

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2 did.

3 Q. And Mr. Franklin responded for  
4 you to call him, correct?

5 A. Yes. That looks right.

6 Q. And then you wrote back to  
7 Mr. Franklin saying "I can try to call you  
8 but on phone now with CEO and making range  
9 of final decisions before 1:00 p.m. board  
10 meeting. I can't expose Ally to any  
11 claims however remote."

12 That's what you wrote, correct?

13 A. That's what that e-mail says.

14 Q. And were you referring to Mike  
15 Carpenter when you referred to being on  
16 the phone with the CEO?

17 A. I probably was, yeah.

18 Q. And were you referring to an AFI  
19 board meeting in that e-mail?

20 A. I don't recall but that would --  
21 that would make sense.

22 Q. When you said that you couldn't  
23 expose Ally to any claims however remote,  
24 what did you mean?

25 A. I just wanted to note on the



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2 timing here, I think my testimony was  
3 probably incorrect earlier if I testified  
4 that my e-mail to Talcott was at 1:28 p.m.  
5 That might be an indication of his time  
6 zone and not mine. Because if you see the  
7 e-mail up the chain was sent Sunday at  
8 12:35 p.m. I'm just not sure of the  
9 timing. But inside that note, inside my  
10 note to Talcott it says I can try to call  
11 you but I'm on the phone right now with  
12 CEO making range of final decisions before  
13 1:00 p.m. board meeting. So I'm assuming  
14 that the 12:35 was my time zone and that  
15 the 1:00 p.m. was my time zone.

16 Q. In any event, Mr. Devine, when  
17 you said you couldn't expose Ally to any  
18 claims however remote, what did you mean?

19 A. So basically as I recall, and  
20 there were a lot of moving parts at this  
21 time, there were a lot of settlements  
22 going on, there were a lot of  
23 conversations but if I recall correctly,  
24 the question was whether or not Talcott  
25 Franklin could logistically accomplish

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2 getting authority from his clients to sign  
3 the plan support agreement and I was  
4 indicating to him in that last sentence, I  
5 can't expose Ally to any claims however  
6 remote, the importance of including all  
7 claims of any type in the plan support  
8 agreement. And the reference to however  
9 remote was with regard to the frequent and  
10 consistent communication I had -- had had  
11 with Talcott Franklin and with Kathy  
12 Patrick, for that matter, from the  
13 beginning that rep and warrant claims as  
14 against Ally are -- were not viable  
15 legally or factually. And that we also  
16 did not believe that there was exposure to  
17 Ally in the securities claims.

18 Q. That was your position. But you  
19 needed the same release provisions for  
20 Mr. Franklin as you had with Ms. Patrick,  
21 right?

22 MR. PRINCI: Objection as to  
23 form.

24 A. When you say I needed them, what  
25 did you mean.

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2 Q. That was nonnegotiable. If Ally  
3 was going to support this plan --

4 A. Which plan?

5 Q. As you told Ms. Patrick, it was  
6 drop dead. Isn't that what you were  
7 telling Mr. Franklin too, that you needed  
8 the same release provisions with him as  
9 you had with Ms. Patrick, full releases as  
10 to Ally?

11 MR. BRYAN: Object to form.

12 A. I think you are mixing up the  
13 settlement agreements that we have been  
14 talking about.

15 Q. Mr. Devine, isn't what you were  
16 telling Mr. Franklin in that e-mail when  
17 you said I can't expose Ally to any claims  
18 however remote that you needed from him  
19 the same release provisions as you had  
20 demanded from Ms. Patrick?

21 MR. BRYAN: Objection to form.

22 A. So the -- the transaction that  
23 is at issue in the e-mail that -- that we  
24 are talking about, Exhibit 155, was an  
25 agreement by Talcott Franklin on behalf of

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2 his clients to enter into a settlement  
3 agreement with ResCap, releasing  
4 essentially the same claims against ResCap  
5 as the Kathy Patrick clients had and to  
6 sign up to support a plan of  
7 reorganization that the estate would file  
8 and pursue which included a release by the  
9 debtor of claims against Ally and a  
10 third-party nonconsensual release. And  
11 that's what we were negotiating there.

12 And I assume that I was  
13 explaining to him that as part of Ally's  
14 participation in the plan support  
15 agreement, including a commitment by Ally  
16 not to object to the \$8.7 billion allowed  
17 claim, that his clients would have to sign  
18 up to the plan as enunciated, which  
19 included a debtor release and a  
20 third-party nonconsensual release.

21 MR. KAUFMAN: Thank you,  
22 Mr. Devine. I have nothing further.

23 MR. WYNNE: Why don't we take a  
24 brief recess and we'll --

25 THE VIDEOGRAPHER: The time is

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2 5:30 p.m. and we are off the record.

3 (Whereupon, there is a recess in  
4 the proceedings.)

5 THE VIDEOGRAPHER: The time is  
6 5:37 p.m. and we are back on the  
7 record.

8 EXAMINATION BY

9 MR. JURGENS:

10 Q. Good evening now, Mr. Devine.  
11 My name is Jason Jurgens from the law firm  
12 of Cadwalader, Wickersham & Taft, LLP on  
13 behalf of MBIA Insurance Corp. I'd like  
14 to ask you some questions, some of which  
15 are going to be MBIA specific and some  
16 have to do with your understanding of the  
17 scope of the release in the settlement  
18 agreement, the RMBS Settlement Agreement.

19 If we can turn back to  
20 Exhibit 150, which Mr. Kaufman showed you  
21 earlier. If you look at the chain where  
22 the date is May 9, 2012, at 10:41 p.m.,  
23 that part of the chain. Do you see that  
24 section? It's the part Ms. Patrick sent  
25 to you or so it appears from the e-mail.

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2 describe as the RMBS or put back  
3 litigation, and I'd include in that  
4 definition both the monoline claims that  
5 were in litigation and any put back claims  
6 that -- that might have been asserted?

7 A. The first substantial contact I  
8 had within my job duties with the mortgage  
9 business was in the summer of 2010 when  
10 the FHFA propounded 64 subpoenas across  
11 the industry and I was asked to coordinate  
12 the response to the subpoenas that were  
13 issued to the company.

14 Q. Did you supervise outside  
15 counsel with respect to the monoline  
16 litigation either MBIA or FGIC litigation?

17 A. Have I done that?

18 Q. Yes.

19 A. Yes.

20 Q. When you were representing AFI  
21 from the time of the October letter that  
22 Ms. Patrick sent to the signing of the  
23 settlement agreement, were you solely  
24 representing AFI or were you also  
25 representing ResCap during that time

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2 period from October forward?

3 A. Well, we should probably be  
4 careful with regard to what you mean by  
5 representing. The -- as I recall, the  
6 first communication from Kathy Patrick  
7 came in to Bill Solomon in his capacity as  
8 general counsel of Ally Financial, Inc.  
9 He responded by indicating to Ms. Patrick  
10 that Ally Financial, Inc. did not have  
11 exposure of the variety that she wanted to  
12 talk about settling. And referred her to  
13 Tammy Hamzephour, general counsel for  
14 ResCap.

15 What -- my participation in  
16 connection with meeting with Ms. Patrick,  
17 I think Mr. Sheeren was there at the first  
18 meeting in Minnesota, I don't recall  
19 exactly. But in any event, I was there in  
20 my capacity as chief counsel for  
21 litigation for ResCap, given that  
22 Ms. Patrick purported to represent clients  
23 who purported to have rep and warrant  
24 essentially contract claims against the  
25 contracting parties, all of whom were

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2 within the ResCap structure and none of  
3 whom were within the Ally structure.

4 Q. So at that time in that meeting,  
5 if I understand, it took place sometime  
6 between October, November, December,  
7 sometime in 2011, the last quarter?

8 A. I don't recall when it took  
9 place. I think we have had some testimony  
10 on it today. If there's a document we  
11 could refer to it.

12 Q. I'm going to try to do this  
13 without -- without taking the time to go  
14 back to the documents.

15 A. Okay, thank you.

16 Q. So initially you were  
17 representing ResCap in what I will call  
18 the Kathy Patrick negotiations with  
19 respect to her claims?

20 A. Well --

21 MR. BRYAN: Objection to form.

22 A. I -- I understand that you would  
23 call them negotiations. So I think that  
24 term is going to end up being understood  
25 in a number of different ways. What --



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2 what went on for some period of time with  
3 Kathy Patrick was an exchange of  
4 communications designed to understand the  
5 nature of her representation, who her  
6 clients were, what kind of claims they  
7 were purporting to make. And so to the  
8 extent that that is a prelude to or a part  
9 of or a type of negotiation, yes. So for  
10 a period of time I was supporting those  
11 discussions in my capacity in support of  
12 the ResCap entities.

13 Q. You understood that Ms. Patrick  
14 was asserting that ResCap owed her clients  
15 a substantial amount of money?

16 A. Yes.

17 Q. So you -- did she at some  
18 point -- what was the first, her first  
19 demand or her first claim that she made  
20 against ResCap, do you recall?

21 A. As I sit here today, I don't  
22 recall her first demand.

23 Q. Did she ask for \$10 billion?

24 A. Now, you are talking about once  
25 the discussions started to take place for

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2 a compromise of those claims within the  
3 context of a ResCap filing.

4 Q. At any point?

5 A. Yeah. So I believe that she did  
6 at one point in the negotiations but now  
7 this was within the context of a potential  
8 ResCap filing at which time I was not  
9 representing ResCap in connection with a  
10 potential resolution of claims against the  
11 ResCap estate.

12 Q. Okay. So if I understand your  
13 testimony correctly, you initially started  
14 out representing ResCap and then at some  
15 point you were no longer representing  
16 ResCap. Could you explain to me when your  
17 role and responsibility changed?

18 A. I think you've slightly  
19 misunderstood but I don't blame you. At  
20 some point -- because it wasn't entirely  
21 clear, right. At some point -- look, when  
22 we started the discussions with Kathy  
23 Patrick, I was representing the ResCap  
24 entities in connection with the assertion  
25 that they had -- that Kathy Patrick did

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2 represent clients who did or did not under  
3 the relevant documents have contract  
4 claims against ResCap. And that was  
5 natural because I had been dealing with  
6 that kind of assertion of claim, although  
7 not by investors and trustees but rather  
8 by the monolines against the ResCap  
9 entities theretofore.

10 At some point ResCap began to  
11 consider a Chapter 11 restructuring. I  
12 did not represent ResCap at all in  
13 connection with this Chapter 11  
14 restructuring, unless you consider the  
15 nature of our discussions according to the  
16 common interest or joint defense privilege  
17 in which case that's why I don't blame you  
18 for misunderstanding the nature of what I  
19 just talked about. But so, yes, I did  
20 represent ResCap in connection with the  
21 sort of bilateral claim of Kathy Patrick's  
22 clients against the ResCap entities and  
23 rep and warrant. Once the context of the  
24 restructuring became a part of that  
25 dialogue, ResCap was represented by Gary

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2 Lee of MoFo. I never represented ResCap  
3 on a bankruptcy related resolution. At  
4 least unless you -- as I say, I did  
5 continue to advise ResCap in connection  
6 with plain sort of legal analysis on rep  
7 and warrant issues but not so much as  
8 would be implicated in connection with the  
9 filing.

10 Q. Thank you for that and let me  
11 try to make sure I understand correctly.  
12 To try to summarize. In the beginning of  
13 from October for some period of time in  
14 the initial stages that you've described  
15 as essentially information gathering  
16 stages, you were representing ResCap. By  
17 the end, by the April and May time period  
18 that we have looked at a variety of  
19 e-mails by that time period you were no  
20 longer representing ResCap, you would have  
21 solely been representing AFI, is that  
22 correct, am I bracketing the change in  
23 role correctly?

24 A. No. I think you are missing one  
25 part of it. But it's -- it's

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2 directionally correct. So first of all,  
3 the difficulty with the word  
4 "representing" given that there were no  
5 pleadings in the matter, nobody appeared  
6 as counsel of record, et cetera. So let's  
7 for a moment agree that the term  
8 "representing" is somewhat subject to a  
9 variety of definitions and understandings.

10 Q. I would use representing as  
11 representing in the context of the  
12 negotiations. Representing a client, be  
13 it AFI or ResCap, in dealing with  
14 Ms. Patrick or the Talcott Franklin group  
15 that came in at the end. If you  
16 understand that.

17 A. Uh-hum. So there -- there were  
18 certainly throughout the relevant period  
19 transactions and discussions,  
20 communications -- transactions meaning  
21 information exchange, et cetera, between  
22 the ResCap parties and Kathy Patrick on  
23 the one hand or Talcott Franklin on the  
24 other, which I assisted and advised ResCap  
25 in accomplishing.

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2 At the same time I was  
3 representing -- I was chief counsel to  
4 Ally as well so of course I was advising  
5 both ResCap and Ally in connection with  
6 the -- the claims that Kathy Patrick  
7 purported to make on behalf of those  
8 clients.

9 Q. When you were representing  
10 ResCap in the initial stages of this  
11 discussions and negotiations with  
12 Ms. Patrick, who did you report to at  
13 ResCap?

14 A. I certainly included Tammy  
15 Hamzephour in any discussions. She was  
16 general counsel to the ResCap entities. I  
17 had conversations with and gave advice to  
18 and took input from a variety of business  
19 clients.

20 Q. So in addition to Ms. Hamzephour  
21 you spoke to other not -- not in-house  
22 counsel but other business representatives  
23 at ResCap?

24 A. Yes.

25 Q. Do you recall who that would be

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2 in the initial stages?

3 A. Sure. So but in what capacity,  
4 as sort of an information source, as a --  
5 as a normal business client or in sort of  
6 a decision-making --

7 Q. In any capacity you were  
8 representing them in the initial stages of  
9 these discussions and negotiations with  
10 Ms. Patrick.

11 A. I had communications with Tom  
12 Marano, with Jim Whitlinger, with Jeff  
13 Blashco (ph), Jeff Cancelliere. This was  
14 my -- as in-house counsel I had naturally  
15 the information and expertise relating to  
16 the rep and warrant claims that Kathy  
17 Patrick and her clients purport to make.  
18 It was all contained within ResCap. That  
19 was my resource base, that was my client  
20 base, that's where the decision-making  
21 authority with regard to whether or not to  
22 engage in real settlement discussions or  
23 not. That's -- that's where all that took  
24 place with the ResCap client.

25 Q. Why was it decided at some point

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2 that you would no longer represent ResCap  
3 and solely be representing AFI?

4 A. I'm going to answer your  
5 question without revealing privileged  
6 communications. At some point it was  
7 determined that people performing  
8 functions like the one I was performing,  
9 which spanned across -- across the Ally,  
10 the nondebtor to the debtor line, should  
11 reorient so that they were aligned with  
12 one or the other. And that was a process  
13 that took place across the various  
14 business units and functions to the extent  
15 that there was any overlap.

16 Q. Do you know when that was?

17 A. With regard to my own role?

18 Q. Yes.

19 A. I don't know exactly when it  
20 was. I understand you would think I would  
21 have an exact date and hour. I don't.  
22 But because -- the reason I don't is  
23 because it's probably accurate to say that  
24 in some measure I continued to be a  
25 resource for the ResCap client even as



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2 they retained MoFo to represent them in  
3 connection with rep and warrant and in  
4 connection with rep and warrant in a  
5 bankruptcy context, simply because I had a  
6 great deal of experience in connection  
7 with the claims that were being asserted  
8 against the estate and because, as you  
9 know, many of us believed that we had a  
10 common interest in joint defense. And in  
11 fact at some point a document was executed  
12 to that effect.

13 So it's not a straight line,  
14 drop dead date after which I was no longer  
15 providing advice to either a client of  
16 sorts or a co, sort of a party subject to  
17 a common defense or joint defense  
18 agreement.

19 Q. I think I understand. To your  
20 knowledge, when did ResCap become  
21 insolvent, and I would define that on a  
22 balance sheet basis when its total assets  
23 were less than its total liabilities?

24 A. I don't know.

25 MR. BRYAN: Objection.